

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7622

B

United States Court of Appeals

FOR THE SECOND CIRCUIT

P/S

JAY JULIEN,

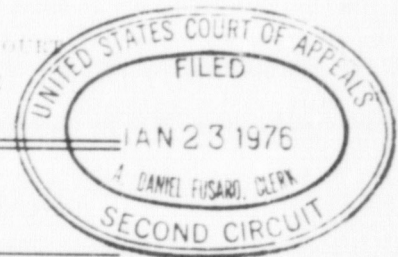
Plaintiff-Appellant,

—against—

SOCIETY OF STAGE DIRECTORS AND
CHOREOGRAPHERS, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



APPENDIX

PHILIP J. KASSEL

Attorney for Plaintiff-Appellant

420 Lexington Avenue

New York, N. Y. 10017

689-5215

BUTLER, FOWLER, LIDSTONE, JAFFIN,

PIERCE & KHEEL

Attorneys for Defendant-Appellee

280 Park Avenue

New York, N. Y. 10017

949-8300

PAGINATION AS IN ORIGINAL COPY

[illegible]

Plaintiff's Witnesses

[illegible]

Defendant's Witnesses

[illegible]

Paul Aaron		
Direct	. . . . .	204A
Cross	. . . . .	219A
Redirect	. . . . .	220A
Alan Schneider		
Direct	. . . . .	221A
Cross	. . . . .	257A
James Hammerstein		
Direct	. . . . .	260A
Redirect	. . . . .	266A

Plaintiff's Exhibits

1 - Collective Bargaining Agreement Dated August 13, 1962	. . . . .	276A
2 - Collective Bargaining Agreement Dated August 13, 1972	. . . . .	297A
3 - Findings of Fact	. . . . .	328A
4 - Extract of Examination Before Trial		331A

Defendant's Exhibits

A - Agreement dated June 3, 1968	. . . . .	334A
Memorandum, Stewart, D.J. Dated October 6, 1975	. . . . .	356A
Memorandum, Stewart, D.J. Dated October 10, 1975	. . . . .	363A
Judgment	. . . . .	364A
Notice of Appeal	. . . . .	365A

68 CIVIL 5120

JAY JULIEN
VS
SOCIETY OF STAGE DIRECTORS AND CHOREOGRAPHERS, INC.

68 CIVIL 5120

JUDGE STEWART

DATE	PROCEEDINGS	FILED
Jan 21-69	Filed complaint and issued summons.	
Jan 2-69	Filed plff's affdvt. & notice of motion for a preliminary injunction-ret. 1-14-69 (Marshal's return attached; served deft. by Mrs. M. Traube 1-9-69)	
Jan 13-69	Filed stipulation adjourning motion now ret. 1/14/69 to 1/28/69.	
Jan 14-69	Filed summons and return, Soc. of Stage Dir. and Choreographers, by Mrs. M. Traube, 30 Dec-68	
Jan 15-69	Filed plff's memorandum in support of its motion for a prel. injunc.	
Jan 15-69	Filed plff's supplemental aff'vt. in support of its motion for prel. injunc.	
Jan 22-69	Filed deft's ANSWER	EF
Jan 31-69	Filed Deft's notice of motion Ret. 2.11.69 For leave to file Amended Complaint.	
Feb 11-69	Filed MEMO. END, on motion papers filed 1/31/69. Motion marked off for non- appearance. So ordered. McGohy, J.	
Feb 17-69	Filed Deft's notice of objections ret. 3.6.69 to notice to admit.	
Feb 28-69	Filed (in court) Affidavit in opposition.	
Mar 28-69	Filed (in court) Reply Affidavit.	
Mar 30-69	Filed OPINION #35702, Bryan, J. Since the defendant is no longer preventing its members from rendering services to plaintiff, his motion for a preliminary injunction is denied in all respects as moot. It is so ordered. (mailed notice)	
Apr 1-69	Filed Special Master's Report of Gregory J. Potter.	
Apr 1-69	Filed Motion to Admit.	
Apr 1-69	Filed Answering Affidavit.	
Apr 1-69	Filed Plaintiff's Memorandum of Law.	
Apr 1-69	Filed MEMO. END, on Notice of Objections filed 2/17/69. Ordered that Requests to admit are withdrawn, reworded, amended, etc. as indicated. Cannella, J.	
Apr 1-69	Filed Deft's admission of facts; truth with facts.	
Feb 1-71	Filed plff's request that deft answer interrogate	
Jan 7-72	Filed plff's affdvt & motion to strike out deft's answer for failure to answer inter ret. 1-13-72	
Jan 7-72	Filed plff's memorandum in support of motion striking deft's answer	
Jan 13-72	Filed memo endorsed on motion filed 1-7-72---A 45 day order consented to-Settle order on notice-Weinfeld, J.	
Mar 21-72	Filed ORDER that the answer of deft is stricken out & that judgment is granted in favor of plff as demanded in the complaint, unless within 45 days from date hereof deft serve upon the atty. for plff answers to interrogate, or plff-Weinfeld.	
May 4-72	Filed deft's answers to interrogate.	
Jan 11-74	Filed plffs. notice to take deposition of deft. on Feb. 1, 1974.	
Jan 1-74	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Raby</i>	
Feb 21-74	Pre-trial conference held by Mag. Raby	
Apr 4-74	Filed consent order for substitution of attys.--Ordered that Bazzle Fowler, Lidstone, Jaffin, Pierce and Kheel now represent deft. due to the death of their former atty., Erwin Feldman. So ordered, Stewart, J.	
Apr 19-74	Pre-trial conference held by Mag. Raby.	
May 1-74	Filed pre-trial order. So ordered. Stewart, J. (consented to)	
Oct 21-74	Filed plffs. affdvt. and notice of motion for an order granting plff. summary judgment, ret. Oct. 31, 1974.	
Oct 21-74	Filed plffs. notice that the attys. for plff. is now: Philip Kassel 420 Lexington Ave, NYC 10017	
Oct 21-74	Filed plffs. notice pursuant to rule 2.	
Oct 21-74	Filed plffs. memorandum of law.	

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STEWART, J.

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DATE	PROCEEDINGS
Oct. 30-74	Filed defts. memorandum of law in opposition to pltf's motion for summary judgment.
Oct. 30-74	Filed defts. rule 9(g) statement.
Oct. 30-74	Filed defts. affdt. of service by mail by Ferrie Gray.
Oct. 30-74	Filed defts. affdt. of Lloyd Richards.
Nov. 15-74	Filed Pltf's Reply Memorandum
Nov. 15-74	Filed memo-endorsed on motion dtd 10/21/74 -- Since both parties to this action agree that there is at least one major factual issue in dispute and since we find that it is a genuine issue of a material fact, pltf's motion for summary judgment filed 10/21/74, must be denied - So ordered - STEWART, J. (m/n)
Dec. 4-74	Filed pltf's. affdt. and notice of motion for an order granting pltf's, leave to reargue motion for summary judgment, etc. rec. on Dec. 12, 1974 at 10am in Rm. 2602.
Dec. 12-74	Filed defts. memorandum of law in opposition to pltf's. motion for leave to reargue.
Dec. 12-74	Filed pltf's. reply memorandum on motion for leave to reargue.
01-28-75	Filed MEMO. END. on motion filed 12-4-74 Motion for leave to reargue denied. So ordered--Stewart, J. m/n
05-21-75	PRE-TRIAL CONFERENCE HELD BY Stewart, J.
05-22-75	Non-Jury trial begun before Stewart, J.
05-23-75	Trial continued
05-24-75	" " and adjourned to 6-6-75
05-26-75	Trial continued and concluded - decision reserved.
07-15-75	Filed Transcript of record of proceedings, dated July 21, 22, 23 & 24, 1975
07-15-75	Filed pltf's post trial memorandum
07-15-75	Filed pltf's findings of fact and conclusions of law
07-15-75	Filed defts post trial brief
07-15-75	Filed defts proposed findings of fact
10-07-75	Filed Memorandum #43214. Pltf. challenges as violative of the antitrust laws seeks damages and injunctive relief. pltf had moved for summary judgment. That motion was opposed by defts. and denied by the court. Since we find the overwhelming credible evidence in the record establishes that directors are employees of producers, we must deny pltf's prayer for relief. So Ordered--Stewart, J. m/n
10-10-75	Filed Judgment Ordered that defts have judgment dismissing the complaint of the pltf.-clerk
10-14-75	Filed AMENDMENT to Opinion #43214 as indicated. (Costs of this action are to be borne by each defendant party and are not to be taxed to plaintiff.) So ordered. Stewart, J. m/n (attached to Original Opinion #43214)
11-06-75	Filed pltf. notice of appeal to the U.S.C.A. for the Second Circuit from the final judgment entered on 10-10-75 mailed copies to Battle, Fowler, Lidstone & Pierce & Kneel

United States District Court

FOR THE

~~SOUTHERN DISTRICT OF NEW YORK~~

JAY JULIEN,

Plaintiff

Defendant

SOCIETY OF STAGE DIRECTORS AND
CHOREOGRAPHERS, INC.,

ONE IN CIVIL ACTION

CIVIL ACTION FILE NO. _____

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

Note:—A return is required, or, if service is made by a person other than a United States Marshal or his Deputy,

PHILIP J. KASSEL,

[SEAL]

of
plaintiff's attorney, whose address

is 25 West 45th Street, New York, N. Y. 10036,

261A166

By

Deputy United States Marshal

in answer to the complaint which is herewith served upon you, within _____ days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date:

[Seal of Court]

December , 1968.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

JAY JULIEN, :

Plaintiff, :

-against- : COMPLAINT

SOCIETY OF STAGE DIRECTORS AND :
CHOREOGRAPHERS, INC., :

Defendant. :

----- X

Plaintiff, for his complaint, respectfully shows to this Court
and alleges:

1. At all the times herein mentioned, plaintiff was and still is a resident of the City, County and State of New York.
2. Upon information and belief, at all the times herein mentioned the defendant was and still is a corporation duly organized and existing by virtue of the laws of the State of New York.
3. This Court has jurisdiction inasmuch as plaintiff alleges liability based on the United States Code Title 15 and inasmuch as the amount of money in issue is in excess of \$3,000.00.
4. Plaintiff is and has been a producer of legitimate Broadway stage plays.
5. Upon information and belief, the defendant is an organization of directors and choreographers of legitimate stage productions.
6. Upon information and belief, the defendant represents its members in negotiating industry-wide agreements covering minimum terms under which the defendant's members will render their services on first class theatrical productions.
7. Upon information and belief, directors of first class theatrical productions are independent contractors who, in such capacity as independent contractors, direct plays for producers of first class theatrical productions.

8. Upon information and belief, for a period of more than ten years no first class stage production of a Broadway play has been presented except where the director has been permitted to direct by the defendant ; and at the present time the industry-wide position of defendant is such that a first class stage production of a Broadway play cannot be directed unless permitted by the defendant.

9. Upon information and belief on or about August 13th, 1962, the defendant entered into an agreement with The League of New York Theatres, on behalf of itself and its members (hereinafter the "Basic Agreement") setting minimum terms and provisions required in order for its members to render services in a first class theatrical production in the United States.

10. Directors who are members of defendant, when working under the terms of the Basic Agreement, and when rendering services to producers of first class stage productions, are not employees and are not in an employer-employee relationship with the producer of the respective production and are independent contractors with relationship to their services for the said production.

11. In approximately 1965 plaintiff was one of the producers of a Broadway show, and the director of the said show was one Reginald Denham, a member of defendant. A dispute arose between plaintiff and defendant and its said member concerning an amount of money claimed by the defendant and the member, which dispute is being litigated and a decision in which dispute is being appealed in the State Courts of New York, by plaintiff.

12. In approximately the early part of 1968, defendant issued a notice to all its members and to the general public, prohibiting its members from rendering services as a director to the plaintiff on any production on which plaintiff was a producer.

13. The aforesaid notice constitutes "blacklisting" plaintiff in order to prevent him from producing a first class stage play. Defendant publicized widely in trade papers and by other means that it prohibited its members from directing any play produced by plaintiff.

14. The aforesaid publicity was intended to and did blacklist plaintiff with the intended effect and the actual effect of preventing plaintiff from producing a first class Broadway stage play.

15. The effect of a notice by defendant to its members, and of the aforesaid notice is to prohibit them from directing a play on Broadway by plaintiff, and is intended absolutely to prevent plaintiff from producing a Broadway stage play.

16. Defendant, its officers, directors and members have conspired to prevent plaintiff from producing a Broadway play and, in fact, defendant and its officers, directors, and members are now preventing plaintiff from producing a Broadway play.

17. All established directors in the United States of first class stage productions are members of defendant and a Broadway play cannot be produced unless the same is directed by a member of defendant.

18. The actions of defendant in prohibiting its members from rendering services to plaintiff is an unlawful action in restraint of trade in violation of Sec. 1 of Title 15 of the U. S. Code.

19. By reason of the said unlawful conspiracy by defendant, its officers, directors and members, and by reason of their actions in unlawful restraint of trade, the freedom of plaintiff to engage directors to direct first class stage productions is destroyed and plaintiff is prevented from engaging a director for a first class stage production, all to the damage and detriment of plaintiff.

20. Plaintiff has been and is preparing a first class stage production for presentation on the Broadway stage but is prevented from proceeding with the said production because defendant prohibits and prevents, unlaw-

fully, and in the course of its unlawful combination in restraint of trade, any of its members from directing such play.

21. By reason of the foregoing, plaintiff has been damaged by the defendant in the sum of \$500,000.00.

WHEREFORE, plaintiff demands judgment and decree as follows:

(1) For a judgment in the sum of \$500,000.00 against the defendant; and

(2) For treble damages pursuant to Sec. 15 of Title 15 of the U. S. Code, and that said judgment be in the amount of \$1,500,000.00; and

(3) For a permanent injunction against the defendant pursuant to Sec. 26 of Title 15 of the U. S. Code, enjoining it from prohibiting and/or preventing its members from rendering services to plaintiff or from directing a stage play produced by plaintiff; and

(4) For a temporary injunction against the defendant pursuant to Sec. 26 of Title 15 of the U. S. Code, enjoining it, during the pendency of this action, from prohibiting and/or preventing its members from rendering services as directors or otherwise to the plaintiff in the course of production of a stage play; and

(5) For a decree that plaintiff has the right to produce a Broadway stage play or other production without interference from the defendant and without defendant prohibiting any of its members from rendering services to the plaintiff or from directing or otherwise working on a stage play produced by the defendant; and

(6) For such other and further relief as to this Court may seem just and proper, together with the costs of this action.

Yours, etc.

PHILIP J. KASSEL
Attorney for Plaintiff
Office and Post Office Address
25 West 45th Street
New York, New York 10036.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANSWER

-----x

JAY JULIEN,

:

Plaintiff, :

-against- :

SOCIETY OF STAGE DIRECTORS
AND CHOREOGRAPHERS, INC.

:

Defendant. :

:

-----x

Civil Action
No. 5120/1968A N S W E R

The defendant, SOCIETY OF STAGE DIRECTORS AND
CHOREOGRAPHERS, INC., by its attorney, ERWIN FELDMAN,
answers the complaint herein and alleges:

1. Denies knowledge or information sufficient to
form a belief as to the allegations contained in par. 1.
and 4. of the complaint.

2. Admits the allegations contained in par. 5. of
the complaint and avers that the defendant's membership is
also comprised of directors and choreographers of stock,
stage, opera, light opera and other miscellaneous pro-
ductions.

3. Denies the allegations contained in par. 7. of
the complaint.

4. Denies each and every allegation contained in
par. 8. of the complaint and respectfully refers this Court
to the entire agreement executed between The League of New
York Theatres and the defendant.

5. Denies each and every allegation contained in
par. 10. of the complaint.

6. Admits the allegations contained in par. 11. of the complaint and avers that the plaintiff refused and neglected to proceed to arbitration with the defendant despite the fact that the Court of Appeals of the State of New York refused to grant the plaintiff a stay of the arbitration proceedings.

7. Admits the allegations contained in par. 12 of the complaint and avers that the defendant's rules as set forth in the said par. 12. are applicable to those producers who do not abide by the terms of a duly rendered arbitration award or do not submit to arbitration despite their contractual obligation to do so.

8. Denies each and every allegation contained in par. 13. of the complaint and avers that it is the procedure of the defendant to eliminate from its "unfair list" those producers who had previously failed to abide by the terms of a duly rendered arbitration award and thereafter satisfied said award.

9. Denies each and every allegation contained in par. 14. of the complaint.

10. Denies each and every allegation contained in par. 15. of the complaint and respectfully refers this Court to par. 7. of this answer, and incorporates the allegations contained in said paragraph herein.

11. Denies each and every allegation contained in par. 16. of the complaint.

12. Neither denies or admits the allegations contained in par. 17. of the complaint.

13. Denies each and every allegation contained in par. 18, 19, 20, and 21 of the complaint.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

14. The defendant, is a membership corporation, organized as a labor organization pursuant to the Membership Corporation Law of the State of New York.

15. The defendant has represented directors and choreographers who are employees of theatrical producers in connection with services performed on theatrical productions and has negotiated collective agreements with leading producers' organizations in the theatrical field.

16. On the 30th day of April, 1965, the plaintiff, together with one Andre Goulston, entered into an agreement with one, Reginald Denham, a member of the defendant Society, as director of a theatrical production known as "THE HOSTILE WITNESS".

17. The aforesaid agreement provided, inter alia, that the parties should be subject to the provisions of the collective agreement between the defendant Society and The League of New York Theatres, Inc., dated August 13, 1962.

18. Upon information and belief, the plaintiff was and is a member of the aforesaid League of New York Theatres, Inc.

19.- Thereafter, a dispute arose between Reginald Denham, the director and the said producers Julien and Goulston and the defendant Society, on behalf of Denham, submitted this dispute to arbitration before the American Arbitration Association, in accordance with the provisions

11A

of the aforesaid agreement between Julien and Goulston as producers and Denham as the director.

20. Thereafter, the said producers Julien and Goulston, filed a motion in the Supreme Court of the State of New York, County of New York, to stay the arbitration proceeding, which motion was denied by the said Court.

21. Thereafter, the said producers made application to the Supreme Court of the State of New York, Appellate Division, First Department, for a stay pending the determination of the appeal, which application was denied.

22. Thereafter, the said producers made application to the Court of Appeals of the State of New York for a stay of the arbitration proceeding. The Court of Appeals declined to issue such a stay and the application was withdrawn.

23. Thereafter, the Supreme Court of the State of New York, Appellate Division, First Department, unanimously affirmed the decision of the Supreme Court, denying the producers' motion to stay the arbitration, and thereafter the producers' motion for leave to appeal to the Court of Appeals of the State of New York was denied.

24. The said producers refused to participate in the arbitration proceedings before the American Arbitration Association notwithstanding the fact that the Courts of the State of New York refused to grant a stay of such proceedings.

25. The Arbitrator duly rendered his award on the 25th day of November, 1967, which award recited in pertinent part:

"There is unpaid, due and owed by the Producers the sum of Four Thousand Dollars (\$4,000.00) to Mr. Reginald Denham, Director of the Play "The Hostile Witness". Said sum shall forthwith be remitted to Mr. Denham."

26. Thereafter, said producers made an application returnable in the Supreme Court of the State of New York, County of New York to vacate the aforementioned arbitration award and a cross-motion was made by this defendant to confirm this award.

27. The application of the producers to vacate the arbitration award was denied by the Supreme Court and the cross-motion to confirm the said award was granted.

28. The producers, thereafter, appealed to the Appellate Division from the order denying the motion to vacate the arbitration award. This appeal is presently pending.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

In accordance with the policy of the defendant under which it places on its "unfair list" all persons who refuse to pay an Arbitrator's award when duly rendered, the plaintiff and Andre Goulston were placed upon the defendant's "unfair list".

29. The plaintiff and the said Andre Goulston shall be removed from the aforementioned "unfair list" upon payment of the Arbitrator's award

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

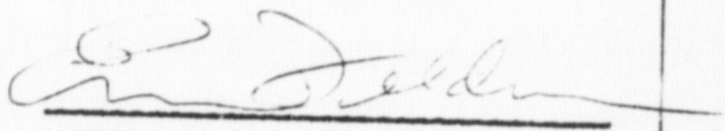
30. The complaint fails to state a claim against the defendant upon which relief can be granted.

WHEREFORE, the defendant, Society of Stage Directors

- 13A

and Choreographers, Inc., demands judgment dismissing the complaint herein together with its costs and disbursements in this action and for such other relief as may be just and proper.

January 21st, 1969



ERWIN FELDMAN,
Attorney for Defendant,
Society of Stage Directors
and Choreographers, Inc.
Office & P. O. Address
1350 Broadway
New York, N. Y.

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

CORPORATE VERIFICATION

Danny Daniels
 President of Society of Stage Directors & Choreo. Inc. the corporation
 named in the within action; that deponent has read the foregoing Answer
 and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein
 stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.
 This verification is made by deponent because defendant, Soc. of Stage Directors & Choreo., Inc
 is a domestic corporation. Deponent is an officer thereof, to-wit, its President
 The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this 21st day of January

1969 (s) Danny Daniels

EDWARD JAFFE
 Attorney and Counsellor at Law
 Notary Public, State of New York
 No. 27061875
 County of New York
 Commission Expires March 30, 1970

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within

in this action, at

attorney(s) for

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official
 depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 at No. deponent served the within

upon the person so served to be the person mentioned and described in said papers as the h personally. Deponent knew the
 Sworn to before me, this day of 19 therein.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

15A

5120/18

JAY JULIEN,

Plaintiff,

-against-

SOCIETY OF STAGE DIRECTORS AND
CHOREOGRAPHERS, INC.,

Defendant.

AMENDED COMPLAINT

Plaintiff, for his complaint, respectfully shows to this Court
and alleges:

AS AND FOR A FIRST
CAUSE OF ACTION;

1. At all the times herein mentioned, plaintiff was and still is a resident of the City, County and State of New York.
2. Upon information and belief, at all the times herein mentioned the defendant was and still is a corporation duly organized and existing by virtue of the laws of the State of New York.
3. This Court has jurisdiction inasmuch as plaintiff alleges liability based on the United States Code Title 15.
4. Plaintiff is and has been a producer of legitimate Broadway stage plays.
5. Upon information and belief, the defendant is an organization of directors and choreographers of legitimate stage productions.
6. Upon information and belief, the defendant represents its members in negotiating industry-wide agreements covering minimum terms under which the defendant's members will render their services on first class theatrical productions.
7. Upon information and belief, directors of first class theatrical productions are independent contractors who, in such capacity as independent contractors, direct plays for producers of first class theatrical productions.

8. Upon information and belief, for a period of more than ten years no first class stage production of a Broadway play has been presented except where the director has been permitted to direct by the defendant; and at the present time the industry-wide position of defendant is such that a first class stage production of a Broadway play cannot be directed unless permitted by the defendant.

9. Upon information and belief, on or about August 13th, 1962, the defendant entered into an agreement with The League of New York Theatres, on behalf of itself and its members (hereinafter the "Basic Agreement") setting minimum terms and provisions required in order for its members to render services in a first class theatrical production in the United States.

10. Directors who are members of defendant, when working under the terms of the Basic Agreement, and when rendering services to producers of first class stage productions, are not employees and are not in an employer-employee relationship with the producer of the respective production and are independent contractors with relationship to their services for the said production.

11. In approximately 1965 plaintiff was one of the producers of a Broadway show, and the director of the said show was one Reginald Denham, a member of defendant. A dispute arose between plaintiff and defendant and its said member concerning an amount of money claimed by the defendant and the member, which dispute is being litigated and a decision in which dispute is being appealed in the State Courts of New York by plaintiff.

12. In approximately the early part of 1968, defendant issued a notice to all its members and to the general public, prohibiting its members from rendering services as a director to the plaintiff on any production on which plaintiff was a producer.

13. The aforesaid notice constitutes "blacklisting" plaintiff in order to prevent him from producing a first class stage play. Defendant publicized widely in trade papers and by other means that it prohibited its members from directing any play produced by plaintiff.

14. The aforesaid publicity was intended to and did blacklist plaintiff with the intended effect and the actual effect of preventing plaintiff from producing a first class Broadway stage play.

15. The effect of a notice by defendant to its members, and of the aforesaid notice is to prohibit them from directing a play on Broadway by plaintiff, and is intended absolutely to prevent plaintiff from producing a Broadway stage play.

16. Defendant, its officers, directors and members have conspired to prevent plaintiff from producing a Broadway play and, in fact, defendant and its officers, directors, and members are now preventing plaintiff from producing a Broadway play.

17. All established directors in the United States of first class stage productions are members of defendant and a Broadway play cannot be produced unless the same is directed by a member of defendant.

18. The actions of defendant in prohibiting its members from rendering services to plaintiff is an unlawful action in restraint of trade in violation of Sec. 1 of Title 15 of the U. S. Code.

19. By reason of the said unlawful conspiracy by defendant, its officers, directors and members, and by reason of their actions in unlawful restraint of trade, the freedom of plaintiff to engage directors to direct first class stage productions is destroyed and plaintiff is prevented from engaging a director for a first class stage production, all to the damage and detriment of plaintiff.

20. Plaintiff has been and is preparing a first class stage production for presentation on the Broadway stage but is prevented from proceed-

ing with the said production because defendant prohibits and prevents, unlawfully, and in the course of its unlawful combination in restraint of trade, any of its members from directing such play.

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21. By reason of the foregoing, plaintiff has been damaged by the defendant in the sum of \$500,000.00.

AS AND FOR A SECOND
CAUSE OF ACTION:

22. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "20" of this complaint as though set out herein at length.

23. Defendant and The League of New York Theatres, Inc. on August 13th, 1962 entered into the Basic Agreement, a copy of which is attached hereto and made part hereof.

24. Defendant requires that every director of a first class stage production shall be a member of the defendant or shall become a member of the defendant.

25. Defendant requires that the terms of the Basic Agreement shall apply to every director of a first class stage production.

26. The Basic Agreement is an industry-wide agreement affecting all first class stage productions.

27. The terms, conditions and provisions of the Basic Agree-

28. The defendant will not permit any of its members to render services as a director of a first class stage production unless the terms of the Basic Agreement are met.

29. By reason of the foregoing contract in restraint of trade imposed by defendant, plaintiff has been damaged by the defendant in the sum of \$500,000.00.

WHEREFORE, plaintiff demands judgment and decree on the first and second causes of action as follows:

(1) For a judgment in the sum of \$500,000.00 against the defendant; and

(2) For treble damages pursuant to Sec. 15 of Title 15 of the U. S. Code, and that said judgment be in the amount of \$1,500,000.00; and

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(3) For a permanent injunction against the defendant pursuant to Sec. 26 of Title 15 of the U. S. Code, enjoining it from prohibiting and/or preventing its members from rendering services to plaintiff or from directing a stage play produced by plaintiff; and

(4) For a permanent injunction against the defendant pursuant to Title 15 of the U. S. Code, enjoining it from enforcing the aforesaid Basic Agreement; and

(5) For a temporary injunction against the defendant pursuant to Sec. 26 of Title 15 of the U. S. Code, enjoining it, during the pendency of this action, from prohibiting and/or preventing its members from rendering services as directors or otherwise to the plaintiff in the course of production of a stage play; and

(6) For a decree that plaintiff has the right to produce a Broadway stage play or other production without interference from the defendant and without defendant prohibiting any of its members from rendering services to the plaintiff or from directing or otherwise working on a stage play produced by the defendant; and

(7) For such other and further relief as to this Court may seem just and proper, together with the costs of this action.

Yours, etc.

PHILIP J. KASSEL
Attorney for Plaintiff
Office and Post Office Address
25 West 45th Street
New York, New York 10036.

cmsr

Merrick - direct

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D A V I D

M E R R I C K , called as a witness in

behalf of the plaintiff, being first duly sworn by the

Clerk of the Court, testifies as follows:

DIRECT EXAMINATION

BY MR. KASSEL:

Q Mr. Merrick, would you state your profession?

A Theatrical producer.

Q Would you state what you have produced over the years?

A Well, somewhat over 80 plays. You don't want me to --

Q Well, when did you start producing?

A First one was November, 1954.

Q Among those eighty plays --

THE COURT: November what year was it?

THE WITNESS: November, sir.

THE COURT: 1954?

THE WITNESS: 1954.

Q Among those plays how many were musicals?

A 26 were musicals.

Q Would you name some of the dramatic plays and some of the musicals?

A Well, Hello Dolly was the most famous, I suppose. Promises, Promises. Plays were Cactus Flower. Forcy Karats.

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2 You know, I can go on.

3 MR. GREGORY: Mr. Merrick, could you keep your
4 voice up, please.

5 THE WITNESS: Yes.

6 MR. GREGORY: Thank you.

7 Q Are you familiar with all aspects of the thea-
8 trical business and profession?

9 A Well, almost all. I suppose there is something
10 that has escaped me.

11 Q Are you now active in production?

12 A Yes, I am still producing plays, but not as many
13 as I used to produce. I am now working in films as well.

14 Q In the live theater are you familiar with the
15 manner in which producers and directors carry out their func-
16 tions?

17 A Yes, I would think so.

18 Q In the course of your productions have you always
19 engaged directors?

20 A Oh, yes. There has been a director on every
21 production.

22 Q Going now to the question of the actual functioning
23 of a director, would you state what the general practice is
24 as to how long before a production actually is put on the
25 stage is a director engaged for the preparation.

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2 A Well, sometimes a director is engaged for a long
3 period before. Maybe as much as a year. But the actual
4 preparation would run perhaps eight weeks.

5 Q What actually does a director do in the prepara-
6 tion period?

7 A The director is working with the author on re-
8 writes he deems necessary. He is casting. He is consider-
9 ing various scenic designers, costume designers. If it's a
10 musical, a choreographer.

11 Q In the course of his work during this preparation
12 period does he have to report to any specific place?

13 A No.

14 Q Who determines where he shall do his work in the
15 preparation of the play?

16 A He determines that himself.

17 Q Who determines whether he should meet with an
18 author, when he should meet with an author?

19 A He is the sole judge of that.

20 Q Is there also usually a tryout period after --
21 MR. KASSEL: Withdrawn.

22 Q After the preparation period there is usually
23 a rehearsal period, is there not?

24 A That's right.

25 Q Does the Actors Equity agreement specify certain

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2 limitations as to the times of rehearsals?

3 A Yes. You are talking about Actors Equity?

4 Q Actors Equity, yes.

5 A That's the actors' union. They have rules on
6 that, yes.

7 Q Within the limits set by the Equity contract
8 who determines when a director shall rehearse, how long he
9 shall rehearse?

10 A The director.

11 Q If the producer disagrees with a director on that
12 matter can he discuss it with the director?

13 A Oh, yes. A producer can discuss anything with
14 the director. The director's decision prevails, however.

15 THE COURT: What does the producer have to do
16 with decisions about how the play will be put on?

17 THE WITNESS: He picks the director.

18 Q After picking the director, once the director is
19 engaged, who makes the decisions in these artistic areas?

20 A The director always prevails. Understand, there
21 are discussions and producers frequently can prevail in terms
22 of reasoning and whatever.

23 THE COURT: What do you mean by reasoning or
24 whatever?

25 THE WITNESS: Well, the producer always has the

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2 right to discuss it with him, but then so does the doorman
3 at the theater. I would say in my case since I have done
4 so many plays perhaps I get a certain amount of respect from
5 directors and they have listened on many matters, but they
6 don't have to.

7 Q After the rehearsal period is there usually a
8 tryout period?

9 A Usually we take it to a trial city, Boston,
10 Philadelphia, Washington.

11 Q And that's just to have the play shown to an
12 audience before it comes into New York; is that right?

13 A Yes.

14 Q How long ordinarily is the tryout period?

15 A Oh, I would say four weeks.

16 Q In the course of the tryout period are there dis-
17 cussions between the producer and the director as to what
18 changes should be made in the presentation?

19 A Yes.

20 Q If there is a disagreement and discussions fail
21 to persuade both parties to agree, who ultimately prevails?

22 A The director prevails.

23 Q While the director is preparing a play is he
24 permitted --

25 MR. KASSEL: Withdrawn.

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2 Q While a director is preparing a play in the
3 ordinary practice in this industry can he be rehearsing
4 another play for a different producer?

5 A While he is preparing, yes. In point, I have a
6 play in rehearsal now, a new Tennessee Williams play, directed
7 by a man named Ed Sherrin. Whilst he was preparing my play
8 ye was working on another play which goes into rehearsal
9 immediately following our opening, and also a musical by
10 Richard Rodgers which will turn up about the first of the
11 year. He has been working all of them at the same time.

12 Q While he rehearses your play who sets the hours
13 of rehearsal within the limits that we discussed a moment
14 ago, within the limits of permissible rehearsal? Who sets
15 that time?

16 A Well, he does, the various directors, someone
17 will start in the afternoon, others will start in the morning.

18 Q In the course of rehearsing a play, or preparing
19 a play, can different directors give different meanings,
20 different interpretations to the same play, the same dialogue?

21 A Of course.

22 Q In the event that a scene or a line is expressed
23 with one meaning by the director, and the producer disagrees,
24 you can from what you said, discuss it with him, try to
25 persuade him?

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2 A You can discuss it.

3 Q Ultimately who prevails?

4 A The director prevails, or there is always the
5 author to consider. He certainly has to discuss it with the
6 author. But, again, he would prevail over the author.

7 Q In the event of a classic play where there is no
8 author living, then as between the producer and the director,
9 who would prevail?

10 A The director would prevail.

11 Q Have you in your own experience had any examples
12 of any disagreement with a director concerning the interpreta-
13 tion, or the mood of a play, or a musical?

14 A No.

15 THE COURT: You have never had a disagreement?

16 THE WITNESS: No. We have had discussions about
17 the way certain scenes turn out. No, I have not had a disa-
18 greement.

19 THE COURT: Have you ever parted company with a
20 director? I don't know whether I should say discharged or
21 fired. But let's say parted company with a director during
22 the rehearsal period, or during the preparatory period where
23 the parting of the company was at your initiative?

24 THE WITNESS: I am proud to say that somewhat
25 after over eighty plays I have never fired a director, and a

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1 don't rehearse Actor A, rehearse Actor B. The director re-
2 fuses to do that. The producer discharges him. Does the
3 industry require that he be paid?
4

5 A Well, since I have never tried to discharge a
6 director I haven't had the experience. I am not an expert
7 on that subject. I would think that he'd have to be paid.

8 Q Would you state what stage business is?

9 A Well, that's a director's term. It's the various
10 movements around the stage by the cast, and small pieces of
11 business done with props.

12 Q Who does determines what the stage business should
13 be?

14 A Well, I would say the director, absolutely, because
15 that's not in the script usually.

16 Q Can the producer instruct the director, require
17 him to abide by the producer's determination as to what the
18 stage business should be?

19 A Can the producer?

20 Q Yes.

21 A He can instruct. It would avail him nothing.

22 Q Does the director have to follow the instructions
23 of the producer?

24 A No.

25 THE COURT: Of course he knows he might be fired

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2 director, fire him.

3 THE WITNESS: Yes, he could. Contractually he
4 could.5 THE COURT: As you probably know a principal
6 subject of this lawsuit is the agreement between the League
7 of New York Theaters and the Society of Stage Directors and
8 Choreographers.9 Does that agreement inhibit producers in their
10 relationship with directors? You are familiar with that
11 agreement?12 THE WITNESS: Oh, yes. Well, it inhibits in many
13 ways, I suppose. I always come across with that Society
14 in the matter of royalty waivers. It's the only organization
15 in the theater that demands approval for the Society over
16 their members' waiving of royalties. Royalties are waived
17 sometimes early in the run of a show when we are trying to
18 hang on and stay open. And sometimes toward the end of a
19 successful show where we are trying to get a few more months
20 out of it.21 The other organizations accept the waivers, but
22 I have found that even though their member accepts a waiver
23 in writing they demand approvals, and it is perhaps subject
24 to some sort of penalty for doing it. I don't know about
25 that last part, but it's always a furor about that. But all

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2 of these conditions that we are talking about, the rights
3 that the director has, many of them are in that contract.

4 It obviously hasn't inhibited me to any great
5 extent except on the basis of the royalty waiver, because I
6 haven't had any major disputes with members.

7 THE COURT: A royalty waived by a director?

8 THE WITNESS: Yes.

9 THE COURT: I am not sure I understand this,
10 but am I correct in my understanding that the Society places
11 restrictions on the right of its members to waive royalties?

12 THE WITNESS: Without their approval.

13 THE COURT: Without their approval. Without the
14 approval of the Society.

15 THE WITNESS: That's right.

16 THE COURT: So that even if the director wishes
17 to waive a royalty the Society won't let him do it unless
18 the Society approves it.

19 Why would a director want to waive royalties?

20 THE WITNESS: He wouldn't want to, but if the
21 play is not doing well -- I have never had trouble getting
22 all of the royalty people, that consists of the author and
23 various other people who are on royalties, I have never had
24 difficulty getting them to agree that in order to keep it
25 running --

1 or whatever about it, and others might just want to pay it.

2 Q And if they go into arbitration and the arbitra-
3 tors determine that there was not good cause for the firing,
4 then does he have to be paid, the practice in the industry.
5

6 A Oh, absolutely.

7 Q Let me go through a number of the things that
8 the director does in the course of directing, and I would
9 like to ask you in each case who determines the manner in
10 which this should be done.

11 Who determines how actors shall speak their line

12 A Well, my experience is that the actors determine
13 that. But I think they get a little help from the director

14 Q Who determines the relationship between actors,
15 whether they should face each other when speaking, whether
16 they should walk away from each other? Who makes that
17 determination?

18 A As far as I know it's the director.

19 Q Once props have been ordered, have been brought
20 into the theater, who determines whether actors should re-
21 hearse with props or without props?

22 A Well, the producer might get into that a little
23 bit because it requires engaging some stagehands, a prop man
24 So that there is an expenditure there.

25 Q Once the prop man has been engaged you have the

2 props and then there is a question of determining whether to
3 use props or not use props for a particular rehearsal, who
4 makes that determination?

5 A The director does that.

6 Q Who determines which scene to rehearse at any
7 particular time?

8 A The director.

9 Q Who determines at what time, at what point in
10 rehearsal actors shall be required to memorize their lines
11 rather than read from the script?

12 A I suppose the director.

13 Q Within the limits set by Equity who determines
14 the hours that an actor shall be rehearsed?

15 A That's the director.

16 THE COURT: Well, after a director is hired
17 and he has started to work other than providing money to
18 pay bills, what is the producer's role?

19 THE WITNESS: The producer has quite enough to
20 do in engaging theaters, building up an advance for it.
21 Also, the producer is the one who negotiates for the actors
22 picked by the director. And there are so many pieces to a
23 production, particularly a musical, he has quite enough to do.

24 I make it a policy to stay away from rehearsals
25 because I want to give the director a complete opportunity

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2 to get staged. I will turn up in Boston, and after that
3 I will make comments which he can pay attention to or not.
4 He has the right to ignore me. But I say that because of
5 following that scheme which was to give him complete freedom
6 I think that they appreciate that, and so I have never had
7 too much trouble getting my ideas in by simple persuasion.

8 Q And if your persuasion fails, who prevails in
9 these areas of the director's work?

10 A The director does.

11 Q Are you familiar with other organizations, such
12 as Actors Equity, which I think is the union in the theater
13 industry?

14 A Yes.

15 Q Would you state some of the rules required and
16 set forth in other organizations, the unions?

17 A Well, are you referring to Equity, the musicians,
18 the stagehands, the wardrobe union, ushers, they all, those
19 unions, and they are unions, set up the working hours and
20 the working conditions for the employee, and of course the
21 salary.

22 Q Are there any working hours or working conditions
23 set up for directors?

24 A None whatsoever.

25 MR. KASSEL: May I have a moment, sir?

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Q Do you know any that are not besides yourself, sir?

A No. None come to mind. But I think there are one or two.

Q Do you sometimes contract for the star of the play before you select the director?

A No. I might have an idea of a star, maybe he is available. But I wouldn't do that. I think the director should approve the cast.

Q Do you know of other producers who do that, namely, hire stars before directors?

A Well, perhaps they do. I don't know.

Q One other question, Mr. Merrick: Is a stage manager generally present at rehearsals?

A Yes.

Q That is his job, to be present, is it not?

A Yes.

Q And he is your employee?

A He is my employee.

MR. GREGORY: Thank you very much, Mr. Merrick.

THE WITNESS: He might be. In many cases of mine the stage manager has been selected by the director. Because I don't think it's important, might as well please the director.

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J A Y J U L I E N , called as a witness in behalf
of the plaintiff, being first duly sworn by the Clerk
of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KASSEL:

Q Mr. Julien, what is your profession?

A I am a lawyer and a theatrical producer.

Q What productions have you had? What productions
have you had in New York?

A On Broadway some six productions.

Q Would you name some of them?

A Colombe, by Jean Anouilh; A Hat Full of Rain,
Michael Gasso; Hostile Witness, Jack Rothy; Hughie by Eugene
O'Neil.

Q Have you also had some production that did not
come into New York and some summer theater productions?

A Yes.

Q Since when have you been producing plays?

A Since 1955.

Q Are you now active in production and in the
theater?

A Yes.

Q In the course of your work have you had agree-
ments for your productions with directors?

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Julien - direct

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2 A Yes.

3 Q Since 1962 have these agreements all had as a
4 minimum the terms of the basic minimum agreement of the
5 Society of Stage Directors?

6 A Yes.

7 Q You heard the testimony of Mr. Merrick concerning
8 the length of time for the preparation period, the rehearsal
9 period, the tryout period. Do you generally agree with that
10 time period?

11 A Yes.

12 Q After a play opens does a director have any
13 further function in connection with the play?

14 A Yes. He generally attends a performance about
15 once every month, if he is available in the city. And
16 continues to do that.

17 Q What is the purpose of that attendance?

18 A To see that the production is kept fresh.

19 Q Would that be for a brushup?

20 A It might be.

21 Q Can he call additional rehearsals within limits
22 of the unions other than the directors society?

23 A Yes.

24 Q Who determines whether he should call a rehearsal
25 for a brushup?

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A He does.

Q During the period that a director performs his work rehearsing a play of one producer, is it the practice in the industry that he should also work for other producers?

A I am sorry, is it --

MR. KASSEL: I will withdraw the question.

Q While a director is engaged by a producer and is rehearsing that producer's play does the practice in the industry permit him to work for other producers?

A Oh, yes.

Q While he is rehearsing that first producer's play who sets the time of rehearsal within the limits that Actors Equity and other pertinent unions allow?

A The director.

Q Once a director has been engaged by a producer what is the practice in the industry concerning who shall finally determine the interpretation of a scene or the play or a bit?

A The director determines. The director determines everything in connection with the interpretation.

Q Let's get one concrete example. Let's take a classic play, for example, Hamlet. Is it possible for one director to direct, say, Polonius' Laertes as comedic and another to direct the same speech as dramatic?

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2 A Yes.

3 Q Who makes the determination as to which it should
4 be?

5 A The director.

6 Q Is it possible that at times a producer will
7 disagree with the director's determination in that area?

8 A It is very possible.

9 Q Are there then discussions between the producer
10 and the director on that item?

11 A Oh, yes. Yes.

12 Q Ultimately who has the right under the practice
13 in the industry, who has the right to prevail?

14 A The director.

15 Q My questions now are going to be concerned with
16 the practice in the industry.

17 Who determines which actor should be rehearsed?

18 A The director.

19 Q Who determines when an actor has been sufficiently
20 rehearsed?

21 A The director.

22 Q Who determines what scenes should be rehearsed?

23 A The director.

24 Q Who determines the hours to set for rehearsal
25 within the time limits allowed by Equity or stage hands if

1 they are involved, and the prop man if he is involved?

2 A The director.

3 Q Who determines what stage business should be
4 used?

5 A The director. By stage business, I take it you
6 mean the actions of the actors on the stage in the play.

7 Q Yes. And does a director frequently put in
8 stage business that is not in the script?

9 A Very frequently.

10 Q To whom does that belong according to the practice
11 in the industry?

12 A That stays in the play.

13 Q Does the producer get that?

14 A No.

15 Q Who determines how actors shall relate to each
16 other?

17 A On or off stage?

18 Q On the stage.

19 A The director.

20 Q In all of these areas if the producer disagrees
21 with the director are there frequently discussions between
22 them?

23 A Yes.

24 Q Are there attempts by each to persuade the other?
25

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2 A Well, I have in my various productions attempted
3 to persuade directors. Frequently.

4 Q Where did the --

5 A Without success.

6 Q Where persuasion has not been effective who
7 under practice in the industry ultimately has the right to
8 make the decision?

9 A Always the director.

10 Q Does the producer have a right to discharge the
11 director either for cause or not for cause?

12 A Oh, yes.

13 Q If a producer discharges a director for cause,
14 what is the understanding in the industry as to whether he
15 has to pay? This is for cause.

16 A If it is determined on arbitration, for example,
17 that there has been cause, and for cause has to be some
18 outlandish, absurd situation which I don't know has ever
19 happened, for example, if the director comes in drunk all
20 the time, that's a common example, but if something like that
21 occurs then it is conceded that the producer doesn't have
22 to pay.

23 However, if you discharge a director because you
24 are disagreeing with the director about any aspect of the
25 production, any aspect of the production, and you just don't

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2 MR. GREGORY: Well, I object to that, your Honor.
3 He cannot interpret the testimony. Nor read into Mr. Traube's
4 mind what he meant to say.

5 MR. KASSEL: May I restate the question, your
6 Honor?

7 THE COURT: All right, go ahead.

8 Q If a director is discharged because he refuses
9 to accept the producer's instructions as to how a play or
10 a scene should be interpreted, is that understood in the
11 industry as being discharge for cause or not being discharged
12 for cause?

13 A Not being discharged for cause.

14 THE COURT: Do you withdraw the question that
15 Mr. Gregory wanted to deal with?

16 MR. KASSEL: Yes, sir.

17 THE COURT: And of course the answer is also --
18 well, I will grant his motion to strike the answer. All
19 right.

20 Q If a director is discharged because he fails to
21 follow instructions of the producer in some artistic area,
22 such as interpretation, or how lines should be spoken, does
23 the practice in the industry require him to be paid as though
24 he had not been discharged?

25 A That is the practice.

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Q Does the same answer pertain to discharge because he refuses to follow the instructions of the producer with respect to which actor to rehearse?

A Yes.

Q With respect to whether to rehearse actors with or without props after props and a prop man are present?

A Yes.

Q Whether to use the stage business the director has proposed or to delete it?

A That's correct. Yes.

Q Would you state your answer completely?

A Yes, that is correct.

Q The question arises as to whether lines from a play can be put, and assume no author's rights are involved, it's a classic play. Who has the right to make the determination?

A The director.

Q If the director and the producer disagree who ultimately makes the determination?

A The director.

Q If the director is discharged for not following the producer's instructions in that area does the practice in the industry require that he be paid as though he had not been discharged?

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A Yes.

THE COURT: Whenever you reach a convenient place, Mr. Kassel, when you would like to break for lunch would you let me know?

MR. KASSEL: I can break right now, your Honor.

THE COURT: If that is convenient for you.

MR. KASSEL: All right.

THE COURT: All right, we will recess until two o'clock.

[Luncheon recess.]

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A F T E R N O O N S E S S I O N

[2:00 p.m.]

THE COURT: You may proceed, Mr. Kassel.

DIRECT EXAMINATION [continued]

BY MR. KASSEL:

Q With respect to the practice in the theater when a director is preparing a play does he have to appear in any specific place or report in any specific place?

A No, sir.

Q Are there any time requirements with respect to the work he does in connection with the preparation?

A None.

Q During the trial period is there any requirement on his part concerning the frequency of attendance at presentations of the play?

A None.

Q What was the most recent play you yourself have had? What was the most recent play you produced?

A Hughie by Eugene O'Neill.

Q Did you enter into an agreement with a director for the direction of Hughie?

A Yes.

Q Would you state the circumstances of that agreement?

2 MR. GREGORY: I will object to the form of the
3 question.

4 MR. KASSEL: All right. Withdrawn.

5 Q Was that agreement based on the minimum basic
6 agreement which is in evidence here?

7 MR. GREGORY: Your Honor, I object. I suggest
8 that the plaintiff offer the agreement rather than have the
9 witness interpret it.

10 THE COURT: I think so.

11 Q What did you agree to pay the director?

12 A The minimum fee set forth in the minimum stage
13 director's agreement as set forth in the agreement in 1972.

14 Q Had the director agreed to any other fees prior
15 to the signing of this agreement?

16 A Yes.

17 Q What was that?

18 A It was approximately \$1,500 less than the minimum
19 fee.

20 Q Was there any reason for that?

21 A Yes, there was.

22 Q What was that?

23 A The play had been produced prior to this produc-
24 tion, some months before, in Chicago, and as it was a one-man
25 cast and the same star was appearing in both productions it

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was not necessary to engage in the same amount of rehearsal as would be normal. That is to say, normally it would be a four-week period. They had the four-week period in Chicago and they did the play there.

Following that the play was presented under a stock production contract with the same star, one-man cast, in Florida and there was a two or three-week rehearsal period plus a period during which the director and the star worked together in Florida for a two-week period.

So by the time the show was ready to come to New York and be presented here, the play had been directed twice and was pretty well rehearsed. However, there was still some work to do because there was a shipped-in stage from the Florida situation to the New York situation. So rehearsals were scheduled again for a very brief period of time, approximately one week instead of four weeks.

The director, by the way, in this case, Martin Fried, had been paid both for the Chicago presentation and the Miami presentation. So that it was felt that a fee of perhaps \$1,500 would be adequate for his time for the New York production. And instead we had to sign the contract calling for the minimum fee which was \$3,500, I believe. Or, within a matter of pennies. It was \$3,500.

THE COURT: What was the name of the show?

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2 THE WITNESS: Hughie.

3 MR. KASSEL: H-u-g-h-i-e.

4 THE COURT: Who was the star?

5 THE WITNESS: Ben Gazzara, I think.

6 Q Did you receive a letter from the Society of
7 Stage Directors concerning your agreement for direction of
8 Hughie?

9 A Yes, I did.

10 Q Is this the letter you received? [Handing.]

11 A Yes. January 28, 1975.

12 MR. KASSEL: Your Honor, I offer it in evidence

13 MR. GREGORY: No objection.

14 [Plaintiff's Exhibit 5 received in evidence.

15 THE COURT: Perhaps the witness will explain
16 this to me. It appears to deal on its face with royalty
17 deferral provisions relating to a director -- I misread it.
18 I thought it said that the director of choreography. It is
19 director or choreographer.

20 Now, royalty deferral provision, is that the same
21 thing as salary?

22 THE WITNESS: No.

23 THE COURT: As I understood it you were going
24 to pay, what's his name, Mr. Fried?

25 THE WITNESS: Fried, yes.

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2 THE COURT: \$1,500 instead of \$3,500 which he
3 eventually got, I take it --

4 THE WITNESS: Yes, he did.

5 THE COURT: What has that got to do with royalty
6 deferral provisions?

7 THE WITNESS: Nothing.

8 THE COURT: All right.

9 BY MR. KASSEL:

10 Q Would you explain what the royalty provision of
11 your agreement was?

12 A Well, the royalty provision was a royalty to be
13 based upon each week's gross. This was a letter sent by
14 the Society to me without any particular reason. It was
15 simply sent as a warning that there would be no deferment
16 possible except under the rules of the minimum agreement.
17 We had not in any way applied for any deferment, we just
18 received the letter.

19 Q Now, did the --

20 A In fact, this was sent -- the date of this is
21 prior to the opening of the play. The play opened in
22 February, this is dated January 28th.

23 Q Apart from royalties now, you testified that you
24 paid \$3,500 per week; is that correct?

25 A Not per week.

cmsr

Julien - direct

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Q I'm sorry, \$3,500. And the amount that you had agreed to accept that the Society would not allow was how much?

A \$1,500.

Q A difference of \$2,000.

A Yes.

Q Going back now, you had an agreement for an option on a play called The Ashes of Mrs. Reasoner; is that correct?

A Correct.

Q Did you pay option only on that?

A Yes.

Q What was the total option money you paid?

A I paid option money which is an advance against royalties to the playwright of \$3,000.

Q Did you produce the play?

A No.

Q What prevented the production of the play?

A I was put on the black list by the Society of Stage Directors.

Q How did you learn that?

A When I sought to engage a director, namely, Frank Corsaro, he notified me that I was on the black list and that he couldn't sign a contract with me.

Q Is it possible to produce a play without signing

1 cmsr

Julien - direct

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2 a director who is a member of the defendant?

3 A No.

4 THE COURT: Why not?

5 THE WITNESS: The director won't sign an agree-
6 ment with you.7 Q Are there any directors of first class stage
8 productions who are not members of the defendant?

9 A I know of none.

10 Q What happened to that \$3,000? Did you ever re-
11 cover any of that \$3,000?

12 A No.

13 Q If you had gone ahead with the production, what
14 would have been the procedure?15 A The normal procedure would have been for the
16 production to reimburse me for that \$3,000.17 Q Assume the production opened and closed after one
18 night; what other payments if any would you have received?19 A The only payments for sure that I would have
20 received would have been a cash office charge of \$350 weekly
21 for a period of -- and this is standard -- two weeks prior to
22 the commencement of rehearsal, four-week rehearsal period and
23 the one week during which the play was produced if it had
24 closed in one night, see. You would get the full week. So
25 there would be a total of seven weeks. Not less than. And

1 at that time the standard charge and the one I was charging
2 was \$350 per week. For a total of \$2,450.
3

4 THE COURT: Charged against the production.

5 THE WITNESS: To the production, yes, sir.

6 MR. KASSEL: No further questions.

7 CROSS-EXAMINATION

8 BY MR. GREGORY:

9 Q Do you know of any instance in the Broadway
10 theater world, Mr. Julien, where a producer has discharged
11 a director because of disagreement about the amount of
12 rehearsal time that the director was rehearsing the cast?

13 A No.

14 Q Do you know of any instance where a producer
15 has discharged a director because of a disagreement between
16 the producer and the director as to the stage business that
17 would be used in the play?

18 A No.

19 Q Do you know of any instance where a producer has
20 discharged a director where there was a disagreement as to
21 how the actors would speak their lines?

22 A No.

23 Q Do you know of any instance in the theater where
24 a producer has discharged a director because of a disagreement
25 as to how the actors would relate to each other?

cmsr

Julien - cross

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A No.

Q Do you know of any instance in the theater where a producer has discharged a director where the director refused to follow the producer's instructions as to whether or not the actors should rehearse with or without props?

A No.

THE COURT: What was that last question, please? Would you read it back, Mr. Reporter?

[Question read.]

THE COURT: With or without props? What do you understand that to mean, Mr. Julien?

THE WITNESS: By props he means a shortening of the term properties, which would relate to movable items on the stage, on the set as against immovable items. The wall being immovable items. The wall being immovable, the telephone, for example, being movable. A pack of cigarettes, for example, used in a production would be a prop.

THE COURT: Yes. I still don't think I understand the question. Would you read it back once more, Mr. Reporter?

[Question read.]

BY MR. GREGORY:

Q Mr. Julien, would you agree with Mr. Merrick that

1 during the preparation period that the director has in
2 connection with a play that there is no requirement for him
3 to devote all of his time to that play?
4

5 A I didn't understand him to testify, or I am not
6 sure what you mean by a requirement.

7 Q Well, I believe you testified on direct examina-
8 tion that a director can work for more than one producer
9 at the same time; is that correct?

10 A That's correct, yes.

11 Q And this frequently happens during the prepara-
12 tion period; is that corre ?

13 A It happens during the rehearsal period, too.

14 Q Do you know of any instance where a director has
15 worked for more than one producer during rehearsals, that is
16 conducted two rehearsals at the same time?

17 A I didn't say, conducted two rehearsals.

18 Q That would be physically impossible; isn't that
19 correct?

20 A I said worked for more than one producer during
21 rehearsals. That is to say he could be rehearsing one play
22 and preparing another.

23 Q That is a possibility, and it does occur; is that
24 your testimony?

25 A Yes. As a matter of fact, Mr. Merrick testified

cmsr

Julien - cross

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that it's occurring right now with the director he has engaged.

Q Is there anything in the contract that you negotiate with directors which requires them to work full time for you during any stage of the production?

A No.

Q Do you know whether or not it is the practice in the industry to permit directors to work for more than one producer at the same time?

A Sure. It is a practice.

Q It is the practice.

A Sure, it is.

Q Is it your testimony that it is the director who schedules the rehearsals?

A Yes.

Q In other words, he could schedule rehearsal before the producer raises the money for the production; is that what you are testifying to?

A Of course not.

Q Isn't it a fact that he cannot schedule -- no rehearsals can be scheduled until after the money is raised? Isn't that correct?

A Of course. Well, they can schedule rehearsals.

Q Isn't it a fact, sir, that the first, the scheduling of the first rehearsal depends upon the producer

JAY JULIEN,

- v s -

68 Civ. 5120

SOCIETY OF STAGE DIRECTORS
AND CHOREOGRAPHERS, INC.

May 22, 1975

[10:30 a.m.]

[In open court:]

THE COURT: Good morning.

MR. GREGORY: Good morning, your Honor.

MR. KASSEL: Good morning.

THE COURT: I appreciate the consideration of
counsel in accepting my apology for being late. Thank you.

MR. KASSEL: Your Honor, we have as Exhibit No.
3 for identification an agreed findings of fact, and Mr.
Gregory and I have now agreed on the wording of Paragraphs 11
and 12 of that, if I may read that into the record.

THE COURT: Yes.

MR. KASSEL: Paragraph 11 will read, "If a pro-
ducer discharges a director without cause it is the Society
of Stage Directors and Choreographers' policy that the direc-
tor is entitled to his full compensation. If a director is
discharged for cause it is the Society of Stage Directors and
Choreographers' policy that he is not entitled to the compen-

sation that would have accrued had he not been discharged."

And Paragraph 12 will read, "A producer may, at will, dismiss a director without cause, but it is the Society of Stage Directors and Choreographers' policy in such event that the producer must pay the director the full fees and royalties that the director would have received had he not been dismissed."

With those amendments I offer this statement of agreed findings in evidence.

MR. GREGORY: No objection.

THE COURT: Thank you.

[Plaintiff's Exhibit 3 received in evidence]

MR. KASSEL: Plaintiff will call Mr. Levin.

HERMAN LEVIN, called as a witness in behalf of the plaintiff, being first duly sworn by the Clerk of the Court, testifies as follows:

DIRECT EXAMINATION

BY MR. KASSEL:

Q Mr. Levin, what is your profession?

A I am a theatrical producer.

Q Since when have you been a producer?

A Late in 1945.

Q Would you state some of your productions, please.

A First play I produced was a play called, a

1 cmsr

Levin - direct

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2 musical called, Call Me Mister. Thereafter I produced No
3 Exit, Gentlemen Prefer Blondes, Bless You All, My Fair Lady,
4 The Girl that came to Supper, The Great White Hope, Lovely
5 Ladies, Kind Gentlemen; Tricks.

6 I believe that is a complete list.

7 Q Are you now active in production?

8 A Yes, I am.

9 Q Are you familiar with the general business of
10 the theater?

11 A I am.

12 Q Are you familiar with the manner in which pro-
13 ducers and directors carry out their functions?

14 A I am.

15 Q Would you agree that generally a director who
16 is engaged will have a pre-production preparation period of -

17 MR. KASSEL: Will you excuse me a moment, your
18 Honor?

19 Q Let me ask you, about how long is the preparation
20 period for a production?

21 A That varies considerably. I would say sometimes
22 a director and an author work together on preparation of the
23 play for rehearsal, it might be a year. But I think that's
24 longer than usual. I would say a few months would be more
25 usual.

1 Q And rehearsals would be about four weeks or so;
2
3 is that correct?

4 A Well, it depends. On a straight play it would
5 probably be four weeks. On a musical it might be as many
6 as seven, depending upon how big a show it is from the stand-
7 point of the number of actors and dancers and chorus, because
8 very often the dancers go into rehearsal earlier than the
9 rest of the cast.

10 Q Then is there usually a tryout period?

11 A Either a tryout period or, that's the most usual
12 way. Sometimes there are previews right here in New York
13 City. Generally in a musical there would be a tryout period.

14 Q After that the show would ordinarily open; is
15 that correct? After the tryout period it would come into
16 New York and open?

17 A Yes. It might have some previews. Even though
18 they have played out of town they might have some previews
19 in New York, but it would then open.

20 Q And after the show has opened is there any
21 function that the director must perform in connection with
22 that show?

23 A Yes. He has to meet his function to check on the
24 show from time to time, and see that it is being presented
25 as he directed it. Also, from time to time, assuming that

1 cmsr

Levin - direct

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2 the show is a success, if it's running, of course. If it
3 closes quickly he has no further function. But there would
4 be replacements in the cast perhaps from time to time, and
5 he would attend auditions of those people. And sometimes
6 direct them upon their entering the show.

7 Sometimes an assistant or a stage manager would
8 undertake that function, sometimes he would.

9 Q Who determines when he should attend these
10 checkup periods?

11 A The director does.

12 Q And if the director is actually engaged in another
13 enterprise, let us say that he is rehearsing another play,
14 is he then required to come for this checkup?

15 A I wouldn't think so, no.

16 Q During the preparation period that we spoke of
17 is the director permitted to be actively engaged for another
18 producer rehearsing another play?

19 A You mean before they go into rehearsal?

20 Q Yes.

21 A Generally speaking, I would think he would be.
22 That would be a matter for him to decide pretty much.

23 Q And if a director were rehearsing your play,
24 would you understand the practice in the industry to be that
25 he may at the same time be preparing plays for another pro-

cmsr

Levin - direct

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1 am familiar with this because it is going on right now -- and
2 since painting a house is disruptive and you know that the
3 longer it goes on the more expensive it is going to be just
4 because it works out that way, I am anxious that the man
5 come to work when he starts work and stay on the job until
6 the end of the day, but the painter I have got is a very
7 popular painter and he has got a lot of work and I have found
8 that along about three o'clock in the afternoon, at 2:30
9 or so, he departs to paint somebody else's house.

11 My deal with him, which was entirely oral, was
12 that he would paint my house period. I feel there is nothing
13 I can do about it. I want him to continue to paint my house
14 and I don't want to make him unhappy.

15 Is this sort of a same relationship?

16 THE WITNESS: It is somewhat the same relation-
17 ship, but in addition there is something that just occurred
18 to me. The number of hours that the director is able to
19 actually direct during the rehearsals are not within his
20 province to determine. They are determined by Actors Equity
21 Association rules which say that you can only rehearse a
22 certain number of hours within a certain time span. Some-
23 thing like seven hours in an eight-hour period.

24 So that at the end of that eight hours he is
25 going someplace, and what he is doing then I don't know.

cmsr

Levin - direct

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Your painter is obviously trying to do two jobs in one day.

THE COURT: Two or three.

THE WITNESS: Maybe three. And there is a similarity because --

THE COURT: He doesn't have an Actors Equity contract or anything like it.

THE WITNESS: Right. He is a contractor on his own and he can paint when he pleases. There is a similarity that exists when you mentioned the popularity of the painter. The director may be a director who is in great demand and with whom the producer cannot act in a way that he would perhaps like to. He can't force him, or, he can't argue with him. The man he knows is considered a very fine, very successful director. It adds a certain prestige to the production. And he doesn't want to fight with him. He is going to make too much trouble.

Basically I think what you are talking about however, is the fact that after this eight hours is finished he may very well be working for someone else. I have found on the other hand that I have had directors who after the eight hours are finished will be sitting with the author and working on my own production. But, again, that's his choice.

THE COURT: Well, do you consider that there is

an obligation on the director to, is it seven or eight hours, whatever it is, to work on that particular play for that period of time?

THE WITNESS: Oh, yes. He obliges himself to do that. I have never had a case where a director has absented himself from the rehearsal during the time that he is allowed to rehearse. They want more time than they are given. They are anxious, too, they have a great financial stake in the success of the play. They are on a royalty basis. And if a play runs they get a lot of money. If it doesn't, they get nothing.

THE COURT: And if a director does not, if he is trying to do too much at the same time and only gives a particular play five hours instead of seven or eight, is that considered to be a basis for firing him?

THE WITNESS: I would say that it just never arises. The director wants, as I say, he wants more time than he is given. If you did fire him you would have a big controversy and an arbitration. You would probably have to end up -- you would end up paying him anyway. Sometimes directors do say, and I have known cases where they say, look, the cast is tired and I must say you are going to agree with him. They have been through this, they have been through that, and we were up late, and so forth, and so on.

cmsr

Levin - direct

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1 A The director

2 Q Who determines what hour to call a rehearsal off?

3 A The director.

4 Q Who determines when a director shall go in to
5 see the rehearsal? I am sorry, when a director shall go in
6 to see a performance.

7 A You mean after the play has opened?

8 Q Yes.

9 A The director.

10 Q Is it the understanding in the industry that in
11 these cases the director has the right to make these deter-
12 minations?

13 A Yes.

14 Q Have you ever had any experience where you have
15 had to dismiss a director, or a choreographer?

16 A Yes, I have.

17 Q The rules concerning directors and choreographers
18 are the same, are they not?

19 A Yes, I believe they are.

20 Q Will you state what your experiences are.

21 A I recall two instances where I dismissed a
22 choreographer. In both cases it was after the musical out of
23 town, and in both cases he was replaced by someone else, and
24 in both cases for so long as the play ran he was continued
25

cmsr

Levin - direct

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1 to be paid his royalty compensation.

2 Q Is it correct to say that in both cases he was
3 paid as though he had not been dismissed?

4 A Yes.

5 MR. GREGORY: Your Honor, I object as leading the
6 witness. Number 2, I object on the grounds that it is ir-
7 relevant. We are talking about choreographers, not directors.

8 MR. KASSEL: He has testified that the rules --

9 THE COURT: Overruled.

10 A I don't know if I answered the question.

11 Q When a director is preparing a play does he have
12 to report to any specific place?

13 A No. That's done either at his apartment or at
14 the author's apartment generally. Or if they have an office,
15 at the offices.

16 Q Who determines when a director shall meet with
17 an author? Or if he shall meet with an author.

18 A The director and the author together make that
19 decision.

20 MR. KASSEL: No further questions, your Honor.

21 CROSS-EXAMINATION

22 BY MR. GREGORY:

23 Q In the industry, Mr. Levin, who has the authority
24 to spend money in the production of a play?
25

cmsr

Levin - cross

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A He wouldn't make it on his own, but he would be one of the three people who I think would make that decision.

Q In other words, a decision is made after consultation primarily between the author, the producer and the director.

A That's right. They meet together and discuss it.

Q What about the selection of the theaters in which the play will be presented out of town? Who has the authority --

A That's also the producer's authority.

Q Does the director have the authority to hire and fire actors?

A Not by reason of -- without a special clause in his contract.

Q That is authority that must be given to him or delegated to him by the producer by way of contract; is that correct?

A But I have never known one, a contract with a director that didn't provide that you cannot hire someone without his approval.

Q This is something that is negotiated prior to the hiring or the engaging of the director; is that correct?

A That's right. But as I say, I have never known one where he didn't have the right of approval.

cmsr

Levin - cross

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exclusive services to this contract, to this play.

Q Is that pretty much the standard in the industry that a director does obligate himself to that -- to those duties?

A I believe he does.

Q So that if a director is engaged in connection with two plays at one time, the probabilities are it's outside the rehearsal period; is that correct?

A I would assume so.

Q And outside the rehearsal period there is no need for a director to spend full time with any particular play, is there?

A It depends on the play itself. And also if he has agreed to give you his exclusive services during that period --

Q That's another matter.

A You know, then I would think he is violating your contract. Whether you have any rights under that contract is another matter.

Q What I am getting at is, let's say when you first engage a director and you know the rehearsals are not going to start for six months or nine months or something like that, you certainly don't expect that director to spend full time on your play until the date rehearsal starts.

cmsr

Levin - cross

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1
2 A No, that's correct.

3 Q In fact, if he is a good director the probabi-
4 lities are, you know, he is going to be involved with some-
5 thing else because his services are in demand.

6 A I would think that's correct.

7 THE COURT: You know that he is going to be
8 involved?

9 THE WITNESS: Yes.

10 MR. GREGORY: No, I said if you know that he is
11 going to be involved in another play because his services
12 are probably going to be in great demand.

13 THE WITNESS: My answer is, yes.

14 Q And that would be a breach of contract in your
15 eyes if he --

16 A If he had granted me his exclusive services?

17 Q No, if he does not grant you -- let's take this
18 circumstance: Your contract provides that he will work
19 exclusively for you during rehearsals for a period of time
20 prior to rehearsals and a period of time after rehearsals,
21 but other than that there is no exclusivity agreement.

22 I am asking you, would you consider that a breach
23 of contract in any form for the director to be working on
24 another play?

25 A It might be a technical breach -- now you have

cmsr

Levin - cross

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got me confused, I must confess.

O Maybe the question is unclear. As I understand your testimony ordinarily you put in at least in your contracts a period which the director is required to work for you exclusively.

A In connection with the direction of a particular play, yes.

O All right. But again in your contract that period of time does not spread over the entire period that he is engaged by you.

A In my case it would probably be for say, sixty or ninety days before the beginning of rehearsal and continue until the opening in New York City.

O Would you say that that is fairly standard in the industry that a director does obligate himself to exclusively perform a service for a producer during that length of time?

A I don't recall reading other people's contracts, but I would assume that other people operate pretty much the same as I do, yes.

THE COURT: What is the basis for your assumption?

THE WITNESS: Well, we all use the same lawyers, Judge, and you know there is about five or six lawyers, and I think they all use the same contracts. If my lawyer

cmsr

Levin - cross

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puts it in I am sure he has read it in other contracts of other clients.

THE COURT: But you say you haven't seen other contracts and you really don't know.

THE WITNESS: No, I haven't. It's a guess.

Q Do you know of any instance where a producer has dismissed a director because the producer felt that the director had violated his obligations in connection with the time he had agreed to expend on a play?

A I know of no such instance, no.

Q And you have been producing since 1945?

A That's right.

Q Are you a member of the League of New York Theaters?

A Yes, sir.

Q For how long a period have you been a member?

A Roughly since 1945. 1946 I joined, after my first play opened.

Q Is it not correct, sir, that you also served as president of the League at one period of time?

A I did, for a couple of years in the fifties, and once again in 1962 and 1963.

Q You were president in 1962?

A Yes.

cmsr

Levin - cross

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Q Then you were president during the time that the first collective bargaining agreement between the League and the Society was negotiated and signed; is that correct?

A I was.

Q And you were aware that the agreement was designated as a collective bargaining agreement?

A Yes, I read the agreement.

Q And you were aware that the Society was holding itself out as being a labor union?

A I was.

MR. GREGORY: No other questions.

THE COURT: How many producers belong to the League?

THE WITNESS: The League is composed of the owners of the theaters in New York City, that is the legitimate theaters, of which there are approximately 34 or 35, and all the producers, with very few exceptions. You know, it's a floating population. I'd say about 50 producers, and the owners of the theaters.

THE COURT: Fifty producers are members of the League?

THE WITNESS: I would think so.

THE COURT: That is pretty close to all the active producers?

cmsr

Levin - redirect

125

1
2 A I recall none in the last ten years or so. I
3 don't recall any at any time since the organization has been
4 in existence.

5 Q You stated on cross-examination that under Equity
6 rules if rehearsals start at let's say, eleven o'clock in
7 the morning they are to continue with no more than an eight
8 hour period with time off in between.

9 Who determines whether a rehearsal shall be
10 called in the morning or shall be called in the afternoon?

11 A The director.

12 Q Who determines which actors to call for rehearsal?

13 A The director.

14 Q Who determines how the play shall be interpreted
15 in the way the actors speak?

16 A The director.

17 Q Who determines how on the stage the actors shall
18 relate to each other?

19 A The director.

20 Q Who determines what stage business shall be
21 used?

22 A A director.

23 Q Once the props have been ordered and there is a
24 prop man there are there times that a director will rehearse
25 actors with props and times that he will rehearse them

without props?

A Yes.

Q Who makes the determination?

A The director.

Q Are there times when actors are rehearsed by reading from the script and other times when they have memorized their lines?

A Yes.

Q Who makes the determination as to when to instruct the actors to memorize their lines?

A The director.

Q Can plays be paced in different ways?

A Yes.

Q Who determines what the pacing will be?

A The director.

THE COURT: What do you understand pacing to mean, Mr. Levin?

THE WITNESS: I would say the speed of delivery, the speed of their action, whether it's done in a fast kind of feeberish style or done more lackadaisically. More romantically, maybe.

Q Who determines the manner in which a director shall work? Is it the director or the producer who determines the manner in which the director works?

cmsr

Levin - redirect

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THE COURT: I notice you said lackadaisically, or romantically. I don't associate lackadaisical behavior with romance.

THE WITNESS: Well, no, that was an unfortunate choice.

THE COURT: But I think I know what you mean.

THE WITNESS: I am sorry, I didn't --

Q Would you state who determines, who decides the manner in which a director shall carry out his work?

A He himself.

Q In either the basic minimum agreement of the directors or in the custom in the field are there any regulations governing hours of work or directors as compared with let's say, the hours of work that stage hand unions have or that Equity has?

A No, none that I know of.

MR. KASSEL: I have no further questions, sir.

RE-CROSS-EXAMINATION

BY MR. GREGORY:

Q Mr. Levin, in connection with the question just put to you by Mr. Kassel, were you answering in accordance with your experience as a producer?

A The question with reference to the hours of work --

Q No, I am talking about the manner in which the

cmsr

Richards - direct

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L L O Y D

R I C H A R D S , called as a witness on
behalf of the defendants, having been first duly sworn

by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. GREGORY:

Q Mr. Richards, what is your occupation or pro-
fession?

A I function as a director in the theater, a
teacher of theater.

Q Have you directed Broadway plays?

A Yes, I have.

Q For how long a period have you been a director
of Broadway plays?

A Since 1957.

Q Do you have a position with the Society of Stage
Directors and Choreographers?

A Yes, I do.

Q What is your position?

A I am president of the Society.

Q For how long a period of time have you been
president?

A Since 1970.

Q Other than the contract that is in evidence --

THE COURT: I am sorry, I missed that. You are

1 cmsr

Richards - direct

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2 presently president?

3 THE WITNESS: Yes, sir.

4 Q Other than the contract that is in evidence has
5 the Society entered into any other collective bargaining
6 agreements?

7 A Yes, it has. It has a collective bargaining
8 agreement with LORT, the League of Regional Theaters. It
9 has a contract -- collective bargaining agreement with the
10 League of Off-Broadway Theaters.

11 MR. KASSEL: I object to the terminology,
12 collective bargaining agreement, unless it is understood
13 that it is referring only to this agreement without charac-
14 terizing it.

15 MR. GREGORY: Well, I --

16 MR. KASSEL: We contend that it is not a labor
17 agreement, your Honor.

18 THE COURT: I think I understand the problem,
19 Mr. Kassel. I will let it stand.

20 Q Approximately how many members does the Society
21 have at present?

22 A Approximately 500.

23 Q Would you tell the Court generally what functions
24 the Society performs?

25 THE COURT: Mr. Levin told us this morning that

75A

1 CMSZ Richards - direct 158

2 he guessed there were 125 directors who are members of the
3 Society. Was that a good guess or a bad guess?

4 THE WITNESS: That's an incorrect guess. The
5 exact number can be gotten, but it is over 500.

6 THE COURT: Directors.

7 THE WITNESS: Directors.

8 THE COURT: How about choreographers?

9 THE WITNESS: Well, there are some that are
10 director - choreographers and choreographers. There are over
11 500 members in the Society, most of which are directors or
12 director - choreographers. I would say at least 80% were
13 directors.

14 Could you tell us generally the functions of the
15 Society?

16 A The Society is developed to establish working
17 conditions within the industry for directors and to protect
18 directors in those working conditions.

19 Q Let's turn to your experience in the Broadway
20 theater. Could you name some of the plays that you have
21 directed?

22 A Raisin in the Sun, Long Dream, The Moon Beseiged,
23 I had a Ball. Others I can't remember.

24 Q I would like you to focus in on the play Raisin in
25 the Sun and go through with your experience in connection

cmsr

Richards - direct

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1 with the relationship to the producer of that play and how
2 you --
3

4 THE COURT: This might take a few minutes, and
5 I suggest that perhaps we ought to adjourn for lunch at this
6 time. Will it suit everybody's convenience if we plan to
7 get back at 1:30?

8 MR. GREGORY: Thank you, your Honor.

9 THE COURT: And you understand, Mr. Kassel, the
10 witness' problem.

11 MR. KASSEL: Yes, I do, and I don't think there
12 will be any problem.

13 THE COURT: Well, we will do our best to accom-
14 modate you. If we can't, we can't.

15 THE WITNESS: I understand.

16 THE COURT: All right.

17 [Luncheon recess.]
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A F T E R N O O N S E S S I O N

[1:30 p.m.]

THE COURT: All right, Mr. Gregory.

DIRECT EXAMINATION [continued]

BY MR. GREGORY:

Q Mr. Richards, before the luncheon break you testified that you were the director on the play entitled Raisin in the Sun; is that correct?

A That's correct.

Q Who was the producer of that play?

A Philip Rose and David Kogan were the producers of record.

Q As I stated earlier, I would like to take you through that play and have you testify as to your relationship with the producers of that play.

Do you recall the circumstances under which you first met the producers?

A Yes, I do.

Q Tell us.

A Actually on that particular play I met the producers through the star who had already been engaged, who was Sydney Poitier, and he was an actor who I had had quite a relationship with, who had studied with me and who was interested in my directing what he did on Broadway.

1 Q Was it your understanding that the producers had
2
3 already entered in a contract with Mr. Poitier?

4 A It was my understanding that they had an agree-
5 ment with Mr. Poitier, yes, to do the play. Mr. Poitier
6 called me and informed me of this and said that he would like
7 me to do the play if it were possible. He set up an appoint-
8 ment with me with the producer. I met with the producer.

9 In meeting with the producer we discussed the
10 play, or, I discussed the play. I told him what I saw in it,
11 what I would do with it, my feelings, my own feelings about
12 it and how I would handle the play.

13 That evidently was sufficiently satisfactory
14 to him so that he set up a meeting with the playwright. I
15 met with the playwright.

16 Q What was her name?

17 A Lorraine Handsberry. I discussed the play with
18 her. I told her what I --

19 THE COURT: What was the name?

20 THE WITNESS: Handsberry.

21 Q How do you spell that?

22 A H-a-n-d-s-b-e-r-r-y. I discussed the play with
23 her, told her what I would do with it, my feelings about it,
24 my thoughts about it. We spent hours together, and evidently
25 that was satisfactory, because I then heard from them that

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2 they would like me to do the play.

3 Q When you say you heard from them, who did you
4 hear from?

5 A The producer.

6 Q Mr. Rose and --

7 A Mr. Rose -- no, Mr. Kogan was not then a part of
8 the producing team. It was just Mr. Rose at that point.

9 Q I see. What happened? You were then signed
10 to a contract?

11 A I was then engaged, yes.

12 Q Do you recall whether that contract contained
13 any particular approvals? Did you have approvals in that
14 case?

15 A That was one of my early contracts and I don't
16 remember any -- that was before the Society existed, and I
17 don't remember having any approvals. I may have had some,
18 but I do not recall them. No, I don't recall having any
19 approvals.

20 Q So in subsequent plays after your name became
21 better known as a director did you obtain approvals of your
22 contract?

23 A Yes, I did.

24 Q Would you say that's probably a pretty common
25 experience in the --

1
2 A It's a common experience. Whenever you get
3 approval, or at least in my experience there is always a
4 rider that goes along with it that says, which shall not be
5 unreasonably withheld. If I have cast approval it always
6 says, which approval shall not be unreasonably withheld.
7 Of anything. Now, to get cast approval is a very, very
8 difficult thing to do because the playwright generally retains
9 that and it's a part of a playwright's basic agreement.

10 THE COURT: What is cast approval?

11 THE WITNESS: The actors who will appear in the
12 play.

13 THE COURT: You mean approval from whom?
14 From the --

15 THE WITNESS: In other words, if I am going to
16 direct a play then we are casting the play when we are de-
17 ciding who will act in a given part the producer will not
18 force an actor on me if I do not feel that that actor can
19 do it.

20 THE COURT: So cast approval is your own.

21 THE WITNESS: It is my own approval of that
22 particular character.

23 Q Then after you sign the contract with the producer
24 what happens next in the ordinary course --

25 A We want to work on the play for a year.

1 cmsr

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Richards - direct

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2 Q With whom?

3 A With the producer, the playwright, the playwright's
4 husband.

5 Q Could you tell us what roles each played during
6 this period.

7 A Well, we used to meet, at one point I remember
8 we were meeting once a week practically. In which we would
9 discuss the various aspects of the play and talk to the
10 playwright about it, things that ought to be changed, cut,
11 altered. And then the playwright would go to work. And
12 we would then get copies of what she had done. We would
13 meet again and discuss that, and new work would develop
14 from that.

15 Q And the producer participated in this?

16 A Everyone, practically everyone that I can remember.
17 Yes, he was very much a part of it.

18 Q What about Mr. Poitier, did he participate in
19 this?

20 A No, Mr. Poitier was in Hollywood at that point.
21 He was doing a movie. He did not participate.

22 Q Did the time come I suppose when the rehearsals
23 began? Is that correct?

24 A That's correct.

25 Q After the preparation period what is the next

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1 thing that occurred in the ordinary course? Did you have
2 auditions, or --

3
4 A Yes, we had auditions with actors. We cast the
5 play.

6 Q How do you go about doing that?

7 A Well, we put up notices in -- we would send no-
8 tices to casting agents who sent us people, word of mouth,
9 the trade papers carried notices of the nature of the parts
10 and what we were looking for. From which agents would send
11 us actors, as well as actors would send pictures, or their
12 agents would send us pictures, or they would come by the of-
13 fice and you would make a promise to see them. And inter-
14 view them and read them for the play.

15 Q Where did this take place?

16 A This took place for the most part at the begin-
17 ning in Mr. Rose's office, and later in theaters that were
18 hired for that purpose.

19 Q Who hired the theaters?

20 A Mr. Rose hired the theaters.

21 Q Was Mr. Rose in attendance at these readings?

22 A I can hardly ever remember him being absent at
23 any of the readings that we held.

24 THE COURT: Which Mr. Rose is this?

25 THE WITNESS: Philip Rose, the producer of the

1
2 play.

3 Q How was the decision made as to which of the
4 actors and actresses would get the parts?

5 A The decisions were always made in concert. We
6 discussed everybody who read and everybody who we were in-
7 terested in, and tried to arrive at a consensus of what we
8 all felt would be best for the play. Which is ultimately
9 the point. We are all there I guess for one purpose, and
10 that is to make it work, and to do anything that we can to
11 make that happen.

12 Q After the casting what happened?

13 A Well, we went into rehearsal, but in casting,
14 in selecting the cast there were often things that happened
15 when there would be -- if we had a disagreement, or a question,
16 we would explore it.

17 One that uniquely comes to my mind which had to
18 do with the second lead in the play who was the mother in
19 the play, and casting her. There was the reading one day
20 of Claudia McNeill, and the reading went terribly, and the
21 producer and the playwright both thought that this particular
22 actor would not be able to do the part.

23 I, from one line I heard her read, felt that
24 this particular actor would be able to do the part and
25 expressed myself in that regard.

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1 We discussed it, and I said, well, I want to
2 prove to you, if I can, what I feel. And so, if you give
3 me two weeks with her I will do some special coaching with
4 her and let's bring her back for another reading, which I
5 did.
6

7 Two weeks later she read for the part and she
8 was given the part of the mother.

9 Now, this very often happens where if you feel
10 something you will explore it. And again it was a case of
11 convincing people of what was best for all of us. Not for
12 one of us, not for me certainly, but for all of us.

13 Q Then you started rehearsals?

14 A Yes, we did.

15 Q What were your relationships to the producer
16 during the rehearsal period?

17 A Well, during the rehearsal period the producer,
18 which I felt very thankful for, he was not always at re-
19 hearsals. He would come in every two or three days. He
20 was off doing other things. But he would come in every few
21 days or so and take a look at what was happening and then we
22 would discuss it.

23 I in fact, a producer that is as sensitive as
24 that, I rely on a great deal personally.

25 Q How?

1 cmsr
2 A Because that is a person who retains an objective
3 eye. When you get very subjectively involved with a thing
4 as you must as a director sometimes you can mistake progress
5 for achievement. And if there is someone who you have
6 agreed with all along what the play is about and what the
7 work is about and that person comes in and takes a look at
8 it and is able to point out certain things to you that you
9 may not be seen because you become very close to it, and
10 that person becomes very valuable in terms of whatever
11 assistance can be rendered in making the project work.

12 Now, Mr. Rose did function in that way to a great
13 extent. The playwright was there much more time, practical-
14 ly all of the time, till the playwright also felt that there
15 were times that she should not be there so she could pull
16 back and get an objective view. And she would absent herself
17 for maybe two days and come in and look at it again. So she
18 wouldn't lose total objectivity.

19 Q Tell me, what was the process under which the
20 rehearsal times were set? How does that happen?

21 A Well, the rehearsal times are set by -- the
22 actual time was set by me within the time circumscribed by
23 the producer. In other words, he told me in my contract
24 when I should begin rehearsal and the times set were set
25 by me in terms of time I felt would be best to rehearse the

1 play.

2
3 There were times when rehearsals were altered according
4 to what requests, requirements or needs that he had. In that
5 particular instance the producer had not completed all of
6 the fund raising for the play. There were times when he
7 needed a run through of the play late in the rehearsal
8 period so he could bring in potential backers to raise money.
9 And he would tell me that he would like a rehearsal on such
10 and such a day at such and such a time, a run through. Or
11 could the play be ready for a run through by such and such
12 a date so that we could gain the rest of the money that was
13 needed to actually produce the play.

14 These rehearsals were held at the time stipulated
15 by him and whatever adjustments had to be made were made so
16 that that could happen .

17 Q Was part of the play rewritten during the re-
18 hearsals?

19 A A great deal of the play was rewritten. Despite
20 working on it a year during rehearsals we actually cut 45
21 minutes from the play, cut out many scenes, cut out one whole
22 character and, oh, a great deal of interactive work was done.
23 And alterations of the play. There were several -- that
24 went on even after we opened out of town. A great deal of
25 rewrites.

Q What role or part did the producer play in this process of rewriting it?

A Well, most of the rewrites at that point were done between the playwright and myself because we were right there at rehearsal and we would do it on the spot. But he, because he had been that involved in the rewriting of the play, was always made aware of what was happening.

I remember one, however, that was done in a very different way which was quite unusual.

Q Tell us about that.

A It was a case, there was one particular scene that the playwright was having very great difficulty in writing and had written it, oh, a good number of times. And each time we felt that it had not improved. And at one point the playwright brought in a scene and gave it to me and said, this is the last time I will write this scene, this is the one we will do.

I looked at the scene and had the actors read it, and it was worse than any we had had that far. It was just a certain element of that scene that the writer had not been able to lick. And she said, that's the last time I am writing it.

Well, I called a meeting that night with the producer and the playwright's husband and I apprised them of

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the circumstances, and I showed them the scene. They read the scene and felt the same way I did about it.

I said, now the playwright has a contract which stipulates that no words are changed unless they are changed by the playwright. Now, what am I to do? And they said to me, what do you suggest? And my suggestion was that I could take the twelve to sixteen copies of scenes that had been written that I had, and if they permitted me to I would adjust those scenes, never alter a word, always using her words, and from those twelve to sixteen scenes put together a scene that I thought would work, we could rehearse it the next day, do it in a run through and see if it worked.

However, it was a decision that the producer had to make because it was one that basically violated in the spirit of the playwright contract. They gave me the authority to do that.

THE COURT: It violated what?

THE WITNESS: The spirit of the playwright's contract.

THE COURT: The spirit of it?

THE WITNESS: Well, while I had not read the playwright's contract I can testify to the exact nature of the contract, except they didn't contradict me when I said it.

2 THE COURT: The contract between the producer and
3 the --

4 THE WITNESS: The playwright.

5 THE COURT: The author, the playwright,

6 THE WITNESS: Yes. Well, I did that that night,
7 re-arranged that scene, took it in the next day and rehearsed
8 it and we did present it that night in front of an audience.

9 The playwright was astounded at the end of the evening.
10 We had avoided her throughout the evening because we felt
11 we had done something contrary to what may have been her
12 wishes.

13 She approached the both of us and she said, don't
14 you ever do that again. She said, the scene stays in, it
15 works, and it will remain, but don't do it again.

16 Q It was your understanding that you could not
17 have done without the say-so of the producer?

18 A I would not have done that without the say-so
19 of the producer.

20 Q Did the play open out of town?

21 A Yes, it did. It opened in New Haven.

22 Q How was the decision reached first of all as
23 to whether or not the play would open out of town?

24 A The producer made that decision.

25 Q How was the decision made as to where the play

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Richards - direct

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1 would open up?

2 A It was made between the producer and the theater
3 owners.

4 THE COURT: You were not consulted?

5 THE WITNESS: I was consulted in this respect.
6 Not about where it would open out of town, but it was always
7 discussed, the nature of house we would want, whether the
8 show should be in a big house or a small house, or what do
9 you think of this house or what do you think of another house.
10 That question has generally always been asked in relation
11 to a show, any shows I have done. But it is ultimately
12 determined by someone else other than as to where we actually
13 open.

14 Q What role did the scenic designer play in this
15 particular production, and did that affect your relationship
16 with the producer in any way?

17 A The scenic designer in this case, and in prac-
18 tically every case I have worked in, is -- the selection of
19 a scenic designer was done ultimately, the hiring of the
20 designer was done by the producer after the playwright, the
21 author and myself and the producer talked with several scenic
22 designers and finally arrived at a decision as to who he would
23 like to design the scenery. This decision was made in con-
24 cert and the producer hired the set designer.
25

1 cmsr

91A
Richards - direct

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2 Q Was there a costume designer also hired?

3 A Yes, there was.

4 Q Was he hired through a similar process?

5 A In the same way. Same process.

6 Q Was there any music in this play?

7 A Yes, there was. Very little music.

8 Q Was a music conductor hired?

9 A Not a conductor, a drummer.

10 Q A drummer?

11 A Was hired to record certain music, and that was
12 arrived at in the same way.

13 Q Mr. Richards, do you know any practice, custom
14 or usage in the industry in the Broadway theater industry
15 that where there is a dispute between the director and the
16 producer over an artistic aspect of a production that the
17 director's decision will prevail?

18 A Basically, no, I don't. Prevail, if by prevail
19 you mean that that decision to stand whether the producer
20 wanted it to or not, I know of no instance of that kind.

21 Q Have you yourself been involved in any such
22 disputes in the connection of direction of Broadway plays?

23 A I can't recall being involved in a dispute. I
24 know I have been involved in differences of opinion. I
25 expect, and I guess I have got to say this about that, one of

1 the most important things that exists between a producer,
2 a director and a playwright is respect, and once that exists
3 then what is expected is that each person express his utmost
4 artistry in the fulfillment of the project we are all con-
5 cerned with. Which means, and I expect that the producer
6 expects me to have a point of view, expects me to be clear
7 and firm about my point of view and to fight for things I
8 believe in. And I expect him to do the same. I expect the
9 playwright to do the same. And I expect us to have argu-
10 ments. I expect us to have disputes. I expect us to re-
11 solve those disputes because there is a basic goal and a
12 basic respect.
13

14 We are all going for the same thing. I don't
15 think a producer would respect me if I just gave in completely.
16 I don't think that is what I am hired for. I am hired be-
17 cause I have a concept, I have an idea, I have a way of
18 working, I have something that will make his product work,
19 and bring some kind of success and financial gain to all of
20 us.

21 THE COURT: When you take on a job as a director
22 do you normally have a written contract with the producer?

23 THE WITNESS: Yes.

24 THE COURT: Is there a form contract, or does
25 it vary depending upon the circumstances?

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Richards - direct

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1
2 THE WITNESS: There is a minimum basic agree-
3 ment, and each director negotiates beyond that or whatever
4 else that director is capable of getting.

5 THE COURT: So that the agreement may very well
6 vary from time to time?

7 THE WITNESS: It absolutely does. The agreement
8 varies. What does not vary is the minimum basic agreement.

9 THE COURT: That has been established by the
10 arrangement between the Society and the League; is that right?

11 THE WITNESS: That's correct. Beyond that it
12 can vary a great deal.

13 Q There has been a great deal of testimony, Mr.
14 Richards, about discharge of a director and whether or not
15 he is entitled to compensation. Would you tell us what
16 your understanding of the practice in the industry is, and
17 also tell us what the position of the Society is under those
18 circumstances.

19 A The position of the --

20 THE COURT: I am not sure I --

21 MR. GREGORY: I will rephrase the question,
22 your Honor.

23 THE COURT: My first question was I didn't
24 think I had heard it all and, secondly, if I did hear it I
25 was not sure I understood it. Do you want to do it over

1 cmsr

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2 again?

3 MR. GREGORY: Yes, I will.

4 Q Would you tell us what the practice in the in-
5 dustry is in connection with the compensation of directors
6 who are discharged by a producer prior to the opening of a
7 play?

8 If the director is discharged for cause it
9 the practice in the industry that that director is not paid
10 beyond that point. If the director is discharged without
11 cause, then we expect, the Society expects, and it is the
12 practice in the industry, that that director is compensated
13 as though he had not been discharged.

14 THE COURT: Have you ever been discharged?

15 THE WITNESS: Yes, sir, I have.

16 THE COURT: Without cause? I mean, both without
17 cause and --

18 THE WITNESS: Yes, sir.

19 THE COURT: And you were paid thereafter?

20 THE WITNESS: Yes, I was.

21 THE COURT: Has that happened very often to you?

22 THE WITNESS: No, it hasn't happened very often
23 to me, but it happens quite a bit in the industry.

24 BY MR. GREGORY:

25 Q Tell us the basis for the position that the

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Richards - direct

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Society takes.

A The reasons for the formulation even of the Society had to do with the fact that there had been many directors who have not been paid, who have done work and have not received compensation that has been promised them and they had no recourse. There were also young directors trying to get into the industry who have been, because they are looking for work and there is so little work, can be made to work for terms that are absolutely negligible because they need the opportunity and the chance.

The Society was basically formed to deal with some of those problems.

Q Well, why does the Society think that a director should be compensated if he is fired for reasons other than cause?

A After a director puts in a year's work -- now, what happens when you sign a contract, when I sign a contract with a producer for, say, a minimum of \$3,500 I am entitled on signing that contract to one-fourth of that fee.

Now, which turns out to be a little over, what?

Q \$900.

A Whatever it is. Under \$1,000. Now, it may be a year before that show is going into rehearsal. I can't possibly live on \$1,000 over that time. I'm sorry I'm off

1
2 the question.

3 Q The question I asked you was why does the Society
4 take the position that a director is entitled to compensation
5 if he is discharged for reasons other than cause?

6 A Now, during that year I may have been working
7 with a playwright, working on the design of the play, working
8 on the play itself, working on the costumes for the play,
9 working on all manner of aspects related to the play. I
10 have undoubtedly been working with the producer to help
11 raise money for the play. I have been lending myself, my
12 name, my services to that project and effecting that project
13 either towards its success or ultimate failure, whichever
14 it is going to be.

15 But indelibly my work is in that work is being
16 done during that time. For which I have received a very
17 small compensation. Because the expectation in that signing
18 of that contract is that the compensation is going to come
19 beyond. So I will work for a year for that money, or over
20 a year, or less than a year, whatever it takes.

21 My second point of compensation is the first
22 week in rehearsal. I get another quarter. The second
23 week in rehearsal I get another quarter. The third week in
24 rehearsal I get another quarter of my fee.

25 If the producer abandons the project in the

cmsr

Richards direct

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eleventh month before it goes into rehearsal, I get nothing more. And all of my work has been for the initial \$700 or \$800 that I receive.

THE COURT: I suppose on the other side of the coin if it doesn't pan out the producer doesn't very much either, does he ?

THE WITNESS: No, he doesn't, but he has selected the project and selected me. But, that is true.

THE COURT: So he is assuming risks, but I guess you do, too, to a certain extent when you sign up with him. You commit yourself to a particular project, if it works, it works; if it doesn't, it doesn't, and you both lose.

THE WITNESS: If it gains there are other things that he gains that I do not gain. Which has to do with if a play is sold for a film, unless I have been big enough to have negotiated that in my contract, I participate in none of that. Any of the subsidiary rights that evolve to that project by virtue of its being done someplace else, in summer stock, from which the producer derives, the benefit I derive none of this benefit. He has all types of benefits which he derives that I do not derive if I don't continue --

THE COURT: Depending on your deal with him.

THE WITNESS: That's right.

THE COURT: If it doesn't work out, you both go

1 cmsr

95A
Richards - direct

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2 down the drain together.

3 THE WITNESS: That's correct.

4 BY MR. GREGORY:

5 Q Following up with his Honor's question --

6 THE COURT: And I suppose if it doesn't work out
7 he may go down the drain a lot more sharply than you do,
8 because he has taken larger risks.

9 THE WITNESS: It depends on whether his risks
10 are personal or he is risking other peoples' money.

11 THE COURT: I don't mean he personally, but the
12 money he is putting up is what I am talking about.

13 THE WITNESS: Yes. His gains are also.

14 THE COURT: Yes.

15 BY MR. GREGORY:

16 Q Do you know of any practice in the industry,
17 Mr. Richards, among directors, that if a director is dis-
18 charged by a producer that other directors will withhold
19 their services from that producer unless the discharged
20 director consents?

21 A I have never heard of it happening in my total
22 experience, and I would imagine -- well, I am not capable of
23 commenting on it, but it would seem to me to be contrary to
24 law. But I have never heard of it happening.

25 THE COURT: You didn't hear of it happening with

cmsr

Richards - direct & cross

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respect to Mr. Julien?

THE WITNESS: No, absolutely not. Oh, I'm sorry. Unless a producer is on the black list. If a producer is on the black list, yes, then the Society is required that you withhold services. But if that is not the case, if it's just a fired director, other directors could not withhold their services.

MR. GREGORY: Thank you.

CROSS-EXAMINATION

BY MR. KASSEL:

Q Mr. Richards, what are the working conditions that the Society has established for directors in the industry?

A They relate to minimum fees, they relate to disputes over payment of fees. They relate to how fees will be paid. They relate to length of time of a working arrangement under -- for which a fee covers.

They are contained in the minimum basic agreement which I can't recite, but they do --

Q Is there anything in the agreement or in the custom concerning working hours within the period of time that a play is first prepared and finally shown?

A There is nothing that I know of in the minimum basic agreement that stipulates the hours.

Q Would you give examples of discharged for cause?

cmsr

Richards - cross

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1
2 A I would consider it to be for cause if a director
3 was physically abusive to people. If a director came to the
4 rehearsal in a condition unable to direct. Those are two
5 examples that spring to mind immediately.

6 Q If a producer were to discharge a director
7 because he disapproves of the director's interpretation of
8 the play, or the way he expresses his interpretation of the
9 play, would you consider that a discharge for cause or dis-
10 charge not for cause?

11 A I would consider that discharge not for cause.

12 Q And if a producer discharges a director because
13 the producer feels that one actor should be rehearsed, the
14 director says he is satisfactory, I insist on rehearsing
15 another one, would you consider that discharge for cause or
16 discharge not for cause?

17 A I would consider that, hypothetical as it is and
18 unique as it is, discharge not for cause.

19 Q Does a director commonly make notes in the course
20 of his directing a play?

21 A Generally.

22 Q To whom would you say those notes belong? Who
23 is the owner of those notes?

24 MR. GREGORY: Your Honor, I think the question
25 calls for a legal conclusion.

1 cmsr

Richards - cross

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2 Q Would you state what the position of the Society
3 is as to who is the owner of those notes?

4 A I cannot state the position of the Society in
5 relation to who is the owner of that note because we have
6 never, in my recollection, ever ruled on such a case. The
7 director, if --

8 Q I am sorry, have you completed your answer, sir?

9 A I completed the answer to that question as I
10 understand it.

11 Q Is there a position that the Society takes as
12 to who owns stage business that a director has worked out
13 for a play?

14 A Yes. The position of the Society is that that
15 business belongs to the director.

16 THE COURT: Mr. Reporter, would you read back the
17 last question and answer, please?

18 [Record read.]

19 BY MR. KASSEL:

20 Q I refer you, Mr. Richards, to your testimony on
21 direct concerning the reasons the Society feels that a
22 director should be paid regardless of whether he is discharged,
23 as long as it is not discharge for cause. Suppose a director
24 is discharged not for cause as you understand the term for
25 cause, the day after the contract is signed. Is the position

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2 of the society that he must be paid as though he had not
3 been discharged, or is the position of the Society otherwise?

4 A It is my belief that the position of the Society,
5 the basic position of the Society would be that the director
6 should be paid as though he had not been discharged.

7 MR. KASSEL: I have no further questions, your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. GREGORY:

11 Q Do you know of instance where a director has
12 been discharged one day after a contract with the producer?

13 A I know of no such instance.

14 Q Has the Society ever formulated a policy with
15 respect to such a situation?

16 A No.

17 Q In other words, you are assuming that the Society
18 may take such a position if the case ever happened.

19 A That is the case, that is my assumption.

20 MR. GREGORY: Nothing further.

21 RECROSS-EXAMINATION

22 BY MR. KASSEL:

23 Q Do you know of any situation where a director
24 has been discharged fairly shortly, a matter of say, several
25 weeks after he has been engaged?

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things that could be in this agreement or in any other agreement which doesn't get into an agreement because the parties can't agree on it. And one party may want it and another party may not, or they both may want it, but they can't agree on the terms and conditions. So I am not sure the question is particularly meaningful.

However, I will permit the answer. Go ahead, Mr. Richards. Do you understand the question?

THE WITNESS: Yes, I do understand the question. I think both the producers and the directors recognize that it is impossible to stipulate the amount of hours it takes to do the job. That you take as much as is necessary to do the job except in the rehearsal situation where you are constrained in the rehearsal situation by the hours imposed by other agreements. But in terms of preparing a play you may work 20 hours one day, 2 hours another, an entire weekend, an entire week, whatever is necessary, to do work you will do. And I am sure that producers feel that if they ever got into limiting the hours they would get less done than if they just permitted it to be the way it is.

THE COURT: All right?

MR. GREGORY: That's all I have, your Honor.

MR. KASSEL: No further questions, your Honor.

THE COURT: Mr. Richards, we talked a few

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1 moments ago about a black list, and I was expecting parti-
2 cularly on -- it came up in response to a question of mine
3 and I asked you to focus on Mr. Julien.
4

5 When you mentioned black list, what did you mean
6 by that? What is a black list?

7 THE WITNESS: An unfair list.

8 THE COURT: What is the unfair list?

9 THE WITNESS: It's a thing that the Society uses
10 very sparingly. The Society is very concerned not only about
11 its members, it is concerned about the theater. And when a
12 producer has been given every opportunity to fulfill his
13 contract and we have gone to court and gone to law and
14 received our judgments and the producer still refuses to pay,
15 refuses to pay instead of has a problem about paying. There
16 have been many instances in the society where a producer
17 was strapped because of the production and still owed the
18 director money has been given time in which to pay. And when
19 a producer still refuses to pay after law, then we feel it is
20 unfair that he engage another director while there is still
21 a director who has not been paid for previous work.

22 That producer is at that point put on an unfair
23 list and the directors are informed to the effect that this
24 particular producer owes money to another director and cannot
25 engage a director unless he comes to some terms with the

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2 previous director.

3 THE COURT: Suppose in that situation a director
4 decides anyway he wants to make the engagement and he goes
5 to work for the producer; then what does the Society do?

6 THE WITNESS: It would be contrary to the work-
7 ing rules of the Society and the director would be brought up
8 before the Executive Board on charges.

9 THE COURT: What could you do to him if the
10 charges were sustained?

11 THE WITNESS: Well, he could be fined. I
12 imagine in an extreme case there could be a limited suspen-
13 sion. But we have never dealt with such --

14 THE COURT: What would be the effect of a
15 suspension? Suspended from membership? That would mean
16 he wouldn't have to pay his dues. I am being facetious,
17 of course.

18 THE WITNESS: Well, I don't know what would happen
19 beyond that, because we have never dealt with that.

20 THE COURT: Have you ever had a man brought up
21 before the Society on charges?

22 THE WITNESS: Yes.

23 THE COURT: Because he dealt with a producer
24 who had been put on the unfair list?

25 THE WITNESS: No.

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once you get on it? Do you cure the problem?

THE WITNESS: Cure the problem by paying it.

THE COURT: But that's the particular problem. Suppose you get on the unfair list for something which doesn't involve money? Well, to put it another way, how many people in your time, which I guess goes back, what, fifteen or twenty years?

THE WITNESS: Well, my time with the Society, I have been on the Executive Board since 1963.

THE COURT: Well, let's take that time. How many producers in that time, that is twelve years, have been put on the unfair list?

THE WITNESS: Not very many. Just a handful.

THE COURT: Are we talking about something less than twenty?

THE WITNESS: Oh, much less than twenty.

THE COURT: Less than five?

THE WITNESS: It may be around five, or less. I'd have to go back to the records to find out. I can't recall many having been put on.

THE COURT: When was the last time? The last time that you know about.

THE WITNESS: I cannot recall when the last time was.

1
2 THE COURT: Ten years ago? Five years ago?
3 Two or three years ago?

4 THE WITNESS: Oh, no. It has to have been --
5 if you asked me to name the person who has been put on the
6 unfair list, --

7 THE COURT: No, no.

8 THE WITNESS: Or if a person had been put on
9 the unfair list since Mr. Julien, I can't even recall one
10 since Mr. Julien that I remember dealing with in an executive
11 manner. It's not a common occurrence.

12 THE COURT: Mr. Gregory said that -- I can't
13 quote him exactly, except I can use one word he used, that
14 the agreement between the Society and the League is a cor-
15 nerstone of the, I guess the relationships in the industry.

16 Do you have any comment you want to make on that?

17 THE WITNESS: Well, it's my feeling that the
18 fact that an agreement exists between the producers and the
19 directors has certainly made for a much smoother operation of
20 the theater itself.

21 THE COURT: Why is that?

22 THE WITNESS: Well, there is a basis to begin
23 talking. When you meet a producer you know at least you are
24 dealing with a person on the level where you are not being,
25 and I will use the word advisedly, in a situation where you

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5
2 MORTON DA COSTA, called as a witness in
3 behalf of the defendant, having been first duly sworn
4 by the Clerk of the Court, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GREGORY:

7 Q Mr. DaCosta, what is your profession?

8 A I am a director, and, on rare occasions, a pro-
9 ducer.

10 Q A director of Broadway plays?

11 A That's correct.

12 Q For how long have you been directing Broadway
13 plays?

14 A I would say roughly since 1953.

15 Q Will you give us the names of some of those plays
16 that you have directed?

17 A Yes. A play called Grey Eyed People, Plain and
18 Fancy, No Time for Sergeants, The Music Man, Aunti Mame, The
19 Wall, Saratoga, Maggie -- do you want me to go on?

20 Q I think that is sufficient.

21 Are you a member of the Society?

22 A I am.

23 Q You mentioned the play Plain and Fancy.

24 A Yes.

25 Q Which you directed?

A Yes.

Q Who was the producer of that play?

A Co-producers Richard Kolmar and James Gardner.

Q Was that a musical?

A It was a musical.

Q What was the play about?

A It was quite early in my career. It was about the Amish and the Pennsylvania Dutch. When I came to that play, as I say, it was early, it had been turned down by several people. I think that was one reason at that time that I was engaged. At any rate, I conferred with the producer and told him what I thought the play should be.

I was subsequently engaged and worked with the authors for, I would say, four to five months. And then went into rehearsal and opened out of town.

Q What was your conception, or interpretation of that play?

A Well, I thought that it at once should be amusing, serious in its intent, not put down as very distinguished people, and I felt that the two things could be managed to make it appealing and commercial and still be true to the tenets of these people.

We did have an altercation while we were out of town. As a matter of fact, it went extremely well when we

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2 It was Mr. Kolmar who then came to me and he said he thought
3 -- he said, out of town is one thing, but in order for it to
4 succeed in New York, he thought the second act had to be
5 jazzed up. And I said --

6 Q Wait. Let's backtrack a minute now.

7 You went through rehearsals on this play?

8 A Yes.

9 Q It was interpreted the way you thought it would
10 be?

11 A Exactly the way I did.

12 Q And this interpretation then, you had discussed
13 that with the directors prior to your being --

14 A Yes. Well, even at that time I knew that unless
15 you saw eye to eye with the authors and eye to eye with the
16 producer you had no chance of producing the play that you
17 thought it should be. So I have always first been sure that
18 at least at that point that we are on the same wavelength.
19 I tell the authors what I think they are trying to do in
20 their play, I tell the same to the producer. If they agree,
21 we go forward. If they disagree, I bow out because beyond
22 that there is no chance of you succeeding in any way.

23 Q Do you believe that you were on the same wave-
24 length through this rehearsal period?

25 A Yes.

1 cmsr
2 Q Then you went out of town?

3 A And continued to be with the authors.

4 Q Tell us about this instance that occurred out of
5 town.

6 A Well , it went extremely well and everybody seemed
7 to be very pleased, except, as I said, Mr. Kolmar seemed to
8 think that the second act needed some, I think his term was
9 jazzing up, or perhaps a little show biz, quote, unquote,
10 and I said, like what? Well, he said, I am not sure. And
11 he got all of the creators together, the writers, the com-
12 poser, the lyricist and myself, made his feeling known and
13 we put our heads together and we all of us thought that the
14 progression of the play was true to the basic idea and that
15 it should stay as it was.

16 Then Mr. Kolmar said, no, I think I have come
17 up with an idea, we have come up with a carnival scene and
18 with a mambo beat which was anti-pathetic, as anybody could
19 see, and we all reasoned with him, begged him not to insert
20 that, that it would spoil the artistic integrity of that
21 piece of work. But we were told that we had to do it.

22 THE COURT: Of course that was Southern Penn-
23 sylvania?

24 THE WITNESS: Southern Pennsylvania. The mambo.
25 I guess that was his rationalization. At any rate, we had

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2 to put it in.

3 I thought it disastrous, and was, unfortunately,
4 prophetic, because I said to him at that time, if you insist
5 that this goes in I am afraid we are cutting off a year of
6 the run of this play, because whatever you think of New York
7 critics I think their intention is sincere and they will see
8 this for opportunism rather than a work of art.

9 As I say, unfortunately prophetic, and when we
10 came in that was the only reservation that the critics had.
11 Otherwise we would have had unanimous reviews and we would
12 have possibly, possibly, nobody can be sure, but we may have
13 had a much longer run.

14 Q You were in opposition to this suggestion by the
15 producer; is that correct?

16 A Right.

17 Q And you expressed that opposition?

18 A I did.

19 Q Having expressed that opposition, what position
20 did the producer take?

21 A Well, it was patently clear that either I did it
22 or I was discharged.

23 Q So you did it?

24 A So I did it. You must realize that at that point
25 -- well, maybe in a way it was prostitution, but at that time

1 I had put in a lot of time in that play and I couldn't leave
2 that in the lurch and just wipe out all of the contribution
3 I had made in the play.

4
5 Q So you stuck with it?

6 A I stuck with it. I have been asked on occasion
7 to do exactly the reverse. I remember when Kermit Blumgarten
8 asked me to do The Music Man and I thought the music was
9 fabulous, but it was a story about a spastic boy --

10 THE COURT: A story about what?

11 THE WITNESS: A spastic boy. And I gave him an
12 idea for the conversion of that story so it would still be
13 the same story, but more acceptable, and he agreed and set
14 me to work with Meredith Wilson.

15 Q Have you ever had any instances where you have
16 had a difficulty, or rather a dispute with a producer over
17 rehearsal times? Or when or where to have rehearsals.

18 A Certainly where. And one might have a dispute
19 about the number of weeks one needs. Of course the producer
20 is the one who has not only the purse strings but the re-
21 sponsibility of that money to lots of people. I can remem-
22 ber once I was asked to rehearse in one hall which was par-
23 ticularly depressing to me. Asked if I could rehearse in
24 another place and, I don't know, the rent was like \$1,000
25 more, and I was told, no, you will rehearse in this one

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2 because the budget will not, you know, take in the place in
3 which you want to rehearse.

4 Q You said you were the director of The Music Man?

5 A Yes.

6 Q Did you have a dispute, or contretemps with the
7 producer of that play in connection with the scenic designer
8 or the scenery?

9 A Well, I wouldn't call it a dispute really. I
10 mean, beyond a certain point there is no room for argument.
11 I worked with the scenic designer, who is Howard Bay, on
12 all the settings for the play, and we came up with what we
13 thought was proper for the play at which point Howard Bay
14 did working drawings for that and gave them to the producer
15 who, in turn, submitted them to various scenic shops for
16 bids. That is the common practice. And all of the bids,
17 according to the producer, came in \$65,000 over his budget.

18 So he called Mr. Bay and myself in and said,
19 you will have to cut that scene down by \$65,000. So we went
20 back to the drawing board and cut out things, and finally
21 got it down to where he could financially afford it.

22 THE COURT: That is the producer's reason for
23 being, isn't it? To furnish the money and make sure there
24 is enough money to keep it going?

25 THE WITNESS: Absolutely.

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2 THE COURT: So to that extent he is not a person
3 that doesn't spend money that he doesn't have.

4 THE WITNESS: Absolutely. He couldn't possibly,
5 as in no other business, I don't think he can allow an em-
6 ployee to be totally autonomous because he could ruin it.
7 And in this case he had to keep the purse strings tied up
8 to a certain point.

9 There is a dichotomy there. I have to do it
10 because just from the production point you want the produc-
11 tion that you have dreamed up. But it is curious how when
12 you go back and these things are imposed on you, you can
13 make a reasonable compromise not to be too unhappy about it.

14 Q Would you say that's a fairly common experience
15 with the budgetary, or the monetary --

16 A I think the one I have just cited happens in, I
17 would say, roughly 98% of the productions.

18 Q You mean the director wants more than what the
19 producer is willing to give and, therefore, the director has
20 to change his concept of the play?

21 A I would think so. I can't speak for everybody,
22 but at least that has been my point.

23 THE COURT: I would think it would have to be
24 100%. If the director wants to spend more money than the
25 producer has --

1 THE WITNESS: Unless there is that occasion where
2 the director wants a simpler play than what the producer wants.
3 That is possible.
4

5 Q Did you direct a play called The Hot Spot?

6 A Yes, half of it.

7 Q Pardon me?

8 A Half of it. I left midstream.

9 Q Tell us about the first half of the play. What
10 was your concept of that play?

11 A It was a play about the Peace Corps, and I thought
12 it was quite bright and pertinent and engaging. And Fryer
13 and Carr were the producers. They asked me to do the play,
14 and I said, well now, let's discuss the play. I would like
15 to do this play, but on one serious condition. They said,
16 what's that? I said, no stars. Because it was an ensemble
17 effort. I said, let's get a lot of attractive young people
18 some of whom have just been discovered and some of whom have
19 not been discovered, because the Peace Corps is a concerted
20 effort. This cannot be a theatrical.

21 They agreed, and we went about our business in
22 proving the play, and so forth, but at the eleventh hour they
23 came to me and they said, we really think that in order for
24 this play to succeed commercially, to get theater parties,
25 we need a star, and Judy Holliday was agreed to do the play.

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2 I was terribly against it, because I thought the play would
3 not fare well with a star, because immediately when you have
4 a star, they have to be the focal point of the play, and the
5 play must in essence become a vehicle.

6 However, by that time again, these loyalties
7 are very difficult because you have been working so much
8 with the writers and everything, you are almost mother,
9 father, sister, brother to them, and there was nothing for
10 me to do. I either could walk away and say, thank you very
11 much, or I could go along, which I said I would go along and
12 try even under those circumstances to keep the original
13 objective.

14 Well, it soon became obvious that it was impos-
15 sible because Miss Holliday at that time was very -- she
16 wouldn't even appear on the stage with the other kids. And
17 I said, how can you be a Peace Corps of one? And it got to
18 such a point that I had to leave the company because I came
19 down with collitis and was rushed to a hospital.

20 Q Again, did you express your opposition to Miss
21 Holliday --

22 A Oh, vigorously. Vigorously.

23 THE COURT: You say you had to leave? Was it
24 because you were fired or because you got sick?

25 THE WITNESS: In that instance because I became

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2 ill as a result of these trials and tribulations.

3 Q Well, when you expressed your opposition to Miss
4 Holliday's employment, what response did the producers have
5 for you?

6 A The response was essentially that their main
7 interest was getting the play, they felt that I was wrong
8 about the ensemble effort, and they said that we could not
9 sell theater parties under the present setup. So that I
10 was, in effect, by stipulating that situation made to feel
11 responsible for their lack of financial success, you see.

12 So I capitulated, and I have found that every
13 time I have that I have made a mistake.

14 THE COURT: That you have what? You have made
15 a mistake?

16 THE WITNESS: That I have made a mistake.

17 Q You testified that you directed a play called
18 The Wall.

19 A Yes.

20 Q Who wrote that play?

21 A Millard Lampell from the John Hersey novel.

22 Q What was that play about?

23 A Well, it was about six million Jews essentially,
24 and I had realized in taking on this play, which ideologi-
25 cally I very much wanted to do and from the point of view of

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2 production I very much wanted to do, I knew that a built-in
3 problem was the audience identifying with that mass of people.

4 It was quite different in The Diary of Anne Frank
5 where you had one little girl to focus on and her trials.
6 And so, there was ostensibly a hero in this play, a prota-
7 gonist, and I said, in order for this to work it has to be
8 a highly vulnerable man. And the author and Mr. Blumgarten,
9 who was the producer of that one said at that time, George
10 C. Scott was just beginning to emerge as an important figure
11 in the theater, they said they thought that he was a very
12 interesting actor, with which I agree, I think he is a
13 consummate actor, but I said I think in this instance did
14 wrong for the play because Mr. Scott's whole style is in-
15 vincible, invulnerable, hard-hitting.

16 They said, well, perhaps that is just what you
17 have seen him play. Maybe he can do other things. And they
18 said, won't you talk to him privately? And he came to my
19 apartment and we talked for a long time, and despite the fact
20 that Mr. Scott said at that time that he would like to embark
21 on more versatile things, I knew that the essential per-
22 sonality could not be suppressed, nor should it have been
23 suppressed. That was his real talent.

24 Subsequently the play, although it was kind of
25 esteemed, did not work with the audience, and I knew that

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1 because of that lack of sensitivity and vulnerability. But
2 at that time that I was told that I had to use him again I
3 went along.
4

5 THE COURT: He appeared?

6 THE WITNESS: Right.

7 THE COURT: He was in the play?

8 THE WITNESS: Yes, sir.

9 Q In connection with your direction of The Music
10 Man, did you have a dispute with the producers in connection
11 with the star of that play?

12 A Well, as a matter of fact, I did. People after-
13 wards said, how did you ever find Bob Preston? Well, I had
14 seen The Playhouse in the Park in Philadelphia do The Frong
15 Page, a very energetic kind of farce, and I thought he was
16 terribly skilled. And when it came round to casting, when
17 I mentioned him everybody thought I was nuts because he
18 wasn't thought of as in that context. And I said, well,
19 my only questions now are, can he sing sufficiently, can he
20 move sufficiently well?

21 So I had him go to the musical director and he
22 reported back to me that he could sing more than sufficiently,
23 and put together with the choreographer, Hosanna White, she
24 said he learned steps before they were out of her feet, and
25 that was it. And Mr. Blumgarten went along.

1
2 It was then, as is my practice, I believe
3 thoroughly in what Lloyd said earlier, I like producers to
4 stay away for a period of time so they can come in with a
5 fresh eye and get what I think I am doing, and that's a pretty
6 good indication that they get what I'm doing and an audience
7 might.

8 Also especially in musicals I like to put them
9 together very quickly so that about the twelfth day of re-
10 hearsal I can have a very rough run-through to see if my
11 dynamics are running in the proper place. Because I feel
12 that's the time to make the changes, not when you get out of
13 town with terrible expense and creous and all that kind of
14 thing.

15 So I had that run-through on the twelfth day of
16 rehearsal, Kermit came and saw it, was very pleased, but
17 was of the opinion that I should fire Mr. Preston. And I
18 had --

19 THE COURT: He was very pleased, but he thought
20 you should fire Mr. Preston or hire him?

21 THE WITNESS: Fire him. Admittedly at that
22 time the play was very rough, but I knew that he could do it,
23 because I had seen him do it. I'd see him in rehearsals
24 when he wasn't as pushed as going through this for the pro-
25 ducer and everything, do a much better job. And fortunately

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2 in that instance I was sufficiently persuasive to say to
3 Kermit, will you go along with me until we open out of town?
4 And then, if you still feel the same way, you know, I will
5 have to agree. Which he very kindly did. And the rest is
6 history.

7 As a matter of fact, it didn't take until we
8 were out of town, because as I have done before with many
9 musicals I have had what we call a dry run. In other words,
10 just do the play on an empty stage with no costumes for an
11 invited audience. And it was one of those few times when
12 they just went mad.

13 Q Do you now in negotiating with producers attempt
14 to obtain in your contract approvals of the cast for approval
15 of the stars?

16 A Yes.

17 Q Have you always been able to obtain those approvals?
18

19 A I didn't in the beginning of my career. I was
20 glad to get a job then. And I must say even later in the
21 career as I have just told you when I did The Wall I was
22 considered a successful director, I had approvals, but they
23 really didn't amount to total approvals as I have explained
24 in the case of, for example, George C. Scott, Judy Holliday,
25 and that kind of thing.

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Q In those cases even though you had the approval the producer nevertheless did hire a star that you objected to?

A That's correct.

Q Did you direct a play in which George Saunders was the star?

A Yes.

Q What was the name of that play?

A Well, again, I was fired from that.

Q First of all, what was the name of the play ?

A It was called Cheri. It was made from The Man Who Came to Dinner.

Q Who was the producer of that play?

A Lee Cooper.

Q What were the circumstances under which you were fired?

A Well, we cast George Saunders to play Sheridan Whiteside, and I thought that was nifty casting, which in fact it would have been. But it turned out that Mr. Saunders had very little vitality, and stick-to-it-iveness. And as a matter of fact, sometimes he would fall asleep in a rehearsal during a scene.

I tried to cope with that as best I could, and then a choreographer left and Mr. Cooper had another chore-

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2 ographer director come down to see it, and that person said,
3 if I can take over the whole thing, if you will fire Mr.
4 DaCosta, then I will do it.

5 Q Well, getting back to Mr. Saunders now, you say
6 sleeping in rehearsals. Did you have a problem there with
7 the producer?

8 A I had a very good relationship. What I couldn't
9 combat was his lack of energy. And it finally became, I saw
10 impossible, because it was not an artistic thing, it was a
11 physeological thing and I left rehearsal one day early
12 because I saw no progress and ran into Mr. Cooper and he
13 insisted that I go back and rehearse with him even though it
14 was fruitless.

15 Q Did you go back?

16 A Yes.

17 Q Mr. DaCosta, do you know of any practice in the
18 industry --

19 THE COURT: Wait a minute now. So then there
20 came a point in time when you were fired?

21 THE WITNESS: Yes. Because the choreographer that
22 had been working someplace with me left the show and it was
23 necessary to break in another choreographer. In the process
24 of doing that Mr. Cooper asked a man to come in and see the
25 play. This man said, if I can take over the entire thing,

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2 choreography and direction, I will do it. And as he was
3 hard put for a choreographer, and I suppose at that point I
4 was just as pleased at that point to have somebody else
5 take a shot at the direction, that's what happened.

6 THE COURT: Did you get paid for the rest of
7 that --

8 THE WITNESS: No. Well, there again, that's
9 usually academic. We made a compromise. Usually you will
10 say, well, I will take half of my royalty not being there.
11 And most often I have found in those cases of doctored plays
12 they come a cropper anyway. So you are talking about half
13 or nothing.

14 THE COURT: In this particular situation it
15 wasn't so much a question of your being fired, but there was
16 somebody who could do two things in an enterprise which was
17 struggling.

18 THE WITNESS: That's right. At any rate, I was
19 let go. Not that it wasn't amicable. We were very good
20 friends, and that's the way it happened.

21 Q Is there a practice in the industry, Mr. DaCosta,
22 that in disputes between producers and directors over artis-
23 tic aspects of the production that the decision of the
24 director always prevails?

25 A Well, I have never been in such a circumstance.

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2 I mean, there may be discussion, and the producer may be
3 persuaded, or the director may be persuaded. But I have
4 never seen an instance where the producer is adamant and the
5 director is adamant where the director prevails. Not in
6 my experience.

7 MR. GREGORY: Thank you.

8 MR. KASSEL: I have no questions, your Honor.

9 THE COURT: Mr. DaCosta, when Mr. Richards was
10 on the stand just a few minutes ago I asked him about the
11 unfair list for directors, and you heard my questions and his
12 answers, and he doesn't know of any unfair list for directors.
13 Is that your experience, too?

14 THE WITNESS: Nor do I. I am sorry. I was on
15 the Executive Committee for a time.

16 THE COURT: There is no need to be sorry. I am
17 just asking you whether you know of any.

18 THE WITNESS: I do not know of any. But I
19 haven't lately been there that much or prior to the time that
20 I served as treasurer.

21 THE COURT: All right. Thank you very much.

22 [Witness excused.]

23 MR. GREGORY: Mr. Traube.

24

25

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S H E P A R D T R A U B E , called as a witness in
behalf of the defendants, having been first duly sworn
by the Clerk of the Court, testifies as follows:

DIRECT EXAMINATION

BY MR. GREGORY:

Q Mr. Traube, what is your profession?

A I am a theatrical producer and director.

THE COURT: Theatrical producer and what?

THE WITNESS: And director.

Q Have you produced a play on Broadway?

A Yes, I have.

Q You have also directed some?

A That is correct.

Q Have you appeared as the producer and director
of certain plays?

A Yes, I have.

Q Could you name some of the plays that you produced
and directed?

A Well, I began my activity in the professional
field in 1930. Over the span of the past 45 years I have
produced and directed many plays.

My first production was a play called A Thousand
Summers starring Jane Kalb, Franchot Tone, Osgood Perkins and
several other very fine artists. I was then 23 years old.

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2 Subsequently I produced another play starring
3 Jane Kalb called Sweet Bells Jangled. I directed a musical
4 production titled Forbidden Melody by Otto Harback and Sig-
5 mond Romberg during which I incurred the experience of not
6 receiving my contract fees.

7 I continued on producing and directing other
8 plays through the 30's and early in 1941, after a period of
9 activity in Hollywood as a film director I produced and
10 directed a play known as Angel Street which ran for three
11 and a half years on Broadway. It became the longest running
12 drama in the history of the Broadway theater, starring Vincent
13 Price, Leo G. Carroll --

14 THE COURT: You say the longest running?

15 THE WITNESS: Longest running drama. There have
16 been musicals that have run longer.

17 THE COURT: Would you call Abie's Irish Rose a
18 comedy rather than a drama?

19 THE WITNESS: That's correct. I produced and
20 directed a musical entitled The Girl in Pink Tights. A Bell,
21 Book and Candle by John VanBruten starring Rosalynd Russell,
22 and subsequently Joan Bennett. A good many other productions.

23 Last season I produced and directed a play called
24 Children of the Wind. And, currently, I have just directed
25 a production of my old Angel Street play, Angel Street which

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is a success in New Jersey and hopefully will appear on Broadway next season.

I also have served over the years as a writer on the theater. I have written for Theater Arts Magazine, The Theater Guild Magazine, the New York Times.

I am the author of a book called So You Want to go into the Theater, which is considered a text book on the theater across the United States. And for a brief period of time I served as a drama critic of The Nation.

Q Have you ever been a member of the League of New York Theaters?

A Yes, I was one of those who helped form the League of New York Theaters.

Q Are you associated with the Society?

A Yes, I am. I am a member of The Society. I serve on the Honorary Advisory Committee.

Q Were you also one of the founders of that organization?

A Yes, I was the founding president of the Society of Stage Directors and Choreographers.

Q Would you tell us the circumstances under which the Society was founded?

A Over the years while I functioned as my own producer it seemed to me that directors historically in the

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1 Broadway theater were muchly put upon and abused in many
2 areas, particularly in the economic areas, and since I
3 identify myself especially with directors early in the
4 30's it occurred to me that we needed an organization, a
5 union of directors, and I first began these discussions early
6 in 1951 with Elia Kazan, a very good friend of mine, and
7 we agreed at that time that it was necessary, but we both
8 went into the Armed Forces.
9

10 I served in the Army for four years, and then
11 came out and went back to Hollywood for awhile. It wasn't
12 until about 1957 that it became more and more apparent that
13 we were the only unorganized workers in the professional
14 theater.

15 Q You say unorganized.

16 A Unorganized. We had no organization repre-
17 senting us. And directors were constantly --

18 THE COURT: Meaning directors.

19 THE WITNESS: Directors, yes. We were con-
20 stantly being victimized in terms of our fees and our
21 royalties, and embarrassed in many ways, and forced to go to
22 court to litigate for redress rather than having the channels
23 of a union represent us.

24 It was in 1957 when I sent out a letter to about
25 a dozen of my colleagues who were directors, and there was

1 a meeting at my apartment and we were all in agreement that
2 this kind of an organization was needed and it was discovered
3 by about a half dozen of the leading directors at the time
4 that even though we enjoyed prestige and success in the
5 theater, each of us had a long catalog of abuses in his past
6 of having been victimized and put upon.
7

8 Beyond that we felt that young directors in
9 particular were most vulnerable to these abuses. So we
10 continued a series of meetings which were held in the
11 Belasco Room of Sardi's Restaurant, usually held after
12 theater hours at about eleven o'clock, twelve o'clock at
13 night.

14 These meetings were enormously stimulating and
15 were the product of enlightened minds, in my judgment. Men
16 who spoke with love and devotion for the theater in the most
17 responsible way.

18 I have never heard better talk about the theater
19 ever in my entire life in the theater than I did during those
20 meetings. And by 1959 we actually incorporated The Society
21 of Stage Directors and Choreographers as a labor organization
22 under the laws of the State of New York.

23 We had made repeated overtures to the League of
24 New York Theaters, which I had been a founding member of,
25 and on whose Board of Governors I had served for some time

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1 and discovered that we were regarded as social pariahs,
2 they did not want another union in the theater, they did not
3 want another labor contract to get into. And it wasn't until
4 1962 that we finally had to call a strike after a tumultuous
5 meeting at the Belasco Room attend by a couple of hundred
6 of the leading directors and choreographers because the
7 choreographers had joined us, too, and properly. And the
8 strike was hurtful.
9

10 We didn't want to do it, we didn't want to affect
11 shows. But we won that strike, and the League then pro-
12 ceeded into orderly negotiations with us, with opposing
13 counsel on both sides of the table, and we hammered out a
14 collective bargaining agreement which established the working
15 conditions and terms for directors and choreographers working
16 with the professional theater.

17 Q Since that time has the League recognized the
18 Society as the collective representative of the directors
19 and choreographers?

20 A Not prior to the execution of our agreement.

21 Q Since that time?

22 A Since then they have recognized us regularly and
23 they have renegotiated the contract.

24 THE COURT: Mr. Traube, just a minor point. I
25 have heard about stage managers, I think, but stage directors,

1
2 is that a phrase of art, or does that mean just directors
3 of productions that appear on the stage?

4 THE WITNESS: That is correct. It means direc-
5 tors of plays.

6 THE COURT: Why are choreographers associated
7 with directors in this organization? I am frankly just
8 curious.

9 THE WITNESS: In many instances choreographers
10 serve as directors. They do both the choreography, the
11 directing, and even when they are just functioning as
12 choreographers they work directly with the director.

13 It was Agnes DeMille that came to me and asked
14 me to include them in, and they have been valuable members
15 of the Society since.

16 THE COURT: Was anybody other than the director
17 or choreographer eligible for membership?

18 THE WITNESS: No, sir.

19 BY MR. GREGORY:

20 Q The 1962 agreement was renegotiated at a later
21 point in time?

22 A Yes, it was.

23 Q When was that?

24 A I believe that was in 1972.

25 Q Is that contract in full force and effect today,

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so far as you know?

A Yes, it's in effect right now.

Q Are you familiar with the play entitled The Ashes of Mrs. Reasoner?

A Yes, I am.

Q Could you tell us the circumstances under which you became familiar with it?

A Well, this is perhaps an extraordinary coincidence, but in 1968 the manuscript of The Ashes of Mrs. Reasoner by Enid Rudd was submitted to me by a play agent named Salisbury. I read the play and I bought an option on the play.

Q For much did you pay for the option?

A I paid \$500.

Q What happened after you bought the option?

A I attempted to set up production of the play.

THE COURT: What is an option in your business?

THE WITNESS: It's the acquiring of the rights to the play for a limited period of time.

THE COURT: Nobody else has the right?

THE WITNESS: That's right, your Honor. I was told by the author that the play had been owned by Mr. Jay Julien.

MR. KASSEL: Objection to any statement as to what Mr. Traube was told.

1
2 THE COURT: No, I don't think we have to take
3 this for the truth. We are finding out what he did and why
4 he did it. That doesn't mean that it is true, what he is
5 telling us, necessarily.

6 Go ahead, Mr. Gregory.

7 BY MR. GREGORY:

8 Q Will you finish, please?

9 A I just learned that Mr. Julien had owned the
10 play and for certain reasons hadn't proceeded with it and
11 that his option lapsed.

12 I believe she mentioned to me that he was in-
13 capable of financing the production. At any event, I pro-
14 ceeded into discussions with an old friend of mine, Alexander
15 Cowan, and we determined we would come together on a co-
16 production of the play, co-produce it, and I would direct
17 it. And we first tried to find out whether we would get a
18 star to appear in it. And I proceeded to talk to Maureen
19 Stapleton, who is an eminent actress and friend of mine,
20 and Maureen said she would like to read the play around, and
21 I thought that was a capital idea, and so did Alex Cowan,
22 and we arranged for Maureen and a group of actors to do it,
23 and to my astonishment the play proved to be singularly
24 unfunny. And Alex and I agreed that the play had a very
25 little future, and I allowed my option to lapse on the play.

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MR. KASSEL: I now move to strike the entire testimony, what Mr. Traube testified to was that in his opinion it was not a worthwhile play, and I don't think that is relevant on the issues here.

MR. GREGORY: I think the history as to what happened to that play is relevant.

THE COURT: Yes, I think, Mr. Kassel, the bare facts are perhaps all that is relevant, but his reasons for dropping the option I don't think are totally insignificant to us. I will let it stand. I will deny your motion.

BY MR. GREGORY:

Q Was the play ever produced to your knowledge?

A Yes, it was.

Q Where was it produced?

A It was presented in 1970 in Paramus, New Jersey.

Q How long did it run?

A It ran for eight days.

Q Was it ever presented on Broadway?

A Not to my knowledge.

Q Sir, using your 45 years of experience as a producer and a director, would you tell The Court what the functions of the producer are insofar as you understand them to be.

A Yes. He first is the person responsible for the

1 cmsr
2 acquisition of the material. Whether it be a play or a
3 musical. And he puts up all the advance funds that are
4 required to acquire the rights to that material. Whether
5 it be music, lyricsists, work, et cetera.

6 He then assembles all the component elements in
7 a staff, particularly the director, the scene designer, the
8 stage manager, the lighting director, the costume designer,
9 and then most particularly he is solely responsible for
10 raising all the money necessary to present the play in a
11 professional manner.

12 He subsequently is obligated to in my judgment
13 express strong and continued artistic convictions about the
14 materials that he has acquired, about the way it is being
15 realized during the rehearsal period by the director, and by
16 all the other creative people connected with the production,
17 and to administer the funds of that production since almost
18 all plays are presented under a limited partnership agree-
19 ment in the State of New York and the producer serves as a
20 general partner and has a fiduciary responsibility under the
21 laws of the State of New York to administer those funds
22 very carefully.

23 He is also responsible to the Attorney General.
24 Subsequent to the opening of the play he is responsible for
25 the day-to-day management of the play, the advance preparation

1 of all the advertising and publicity, the continued adver-
2 tising and publicity, the endless series of details that
3 concern the daily operation of a New York theatrical pro-
4 duction. The booking of the theaters, arrangement of terms,
5 et cetera.

6
7 Q Just generally what are the functions of a
8 director?

9 A The functions of a director in asthetic terms
10 is to realize the intention of the author through the actors
11 for the benefit of an audience. He stages the play. He
12 directs the play. And directs the actors.

13 Q What is the practice in the industry as to what
14 authority a director has in connection with fulfilling his
15 function as the director?

16 A His authority is over the actors, once they have
17 been selected, and usually by a consensus arrangement which
18 the producer and particularly the author and the director
19 come together and reach a concerted judgment, and once those
20 actors are selected, then the director's authority is over
21 those actors to make sure that they realize in their re-
22 hearsed performances the objectives he hopes to attain in
23 the end results of the production.

24 Q Is the director's authority such that he can
25 overrule an artistic decision of the producer?

1 cmsr
2 A No, he has no such authority unless it has been
3 delegated to him by the producer.

4 Q Is such authority sometimes delegated?

5 A Yes, in many instances. Producers vary in their
6 attitudes. We have had two producers, old friends of mine,
7 appear in this courtroom and they have testified from their
8 point of view, which is a very permissive one, which perhaps
9 might be characterized as absentee producer approach to the
10 theater. It is not mine and it is not the practice of many
11 other producers that I know in the theater who have a very
12 strong personal involvement in the creative realization of
13 the play. And in the end result of that production.

14 Q Sir, do you recall a play entitled Destry Rides
15 Again?

16 A Yes, I do.

17 Q Do you recall who produced that play?

18 A It was produced by David Merrick.

19 Q Do you recall an occurrence in which you were
20 invited to attend a run-through at that time?

21 A Yes, a very close friend of mine, a dear friend
22 of mine was one of the authors of that show, and he invited
23 me to a run-through of the production.

24 Q Who was the author?

25 A Harold Rome.

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Q And did you --

THE COURT: A run-through is without costumes?

THE WITNESS: Without costumes and without scenery. Just a complete performance --

Q During what part of the rehearsal period does a run-through take place ordinarily?

A Usually the second or third week. When the director and the choreographer on the musical put it together. Rehearsed enough of the show so that they can run through the entire production.

Q Did you attend the run-through?

A Yes, I did.

Q Was Mr. Merrick present?

A Yes, Mr. Merrick was very present.

Q Would you tell The Court what you observed as to Mr. Merrick's presence at this run-through?

A Well, Mr. Merrick was very active all evening long. He kept running up and down the aisle shouting instructions at everybody connected with that production. And expressing displeasure with many of the things that had occurred in the run-through.

Q Were some of those instructions directed to the director of the play?

A Yes, they were.

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Q In your experience in the theater, Mr. Traube, would you say that the budget of a production affects the artistic presentation of the play?

A It has to, yes.

Q Could you tell us how?

A The esthetics of the theater are determined by how you administer the funds. In my experience over the years you get the best results by spending the least amount of money, because then you flex the imagination and you reach out constantly to find new combinations to realize something marvelous, something that will capture the imagination of an audience.

When you spend undue sums of money, in my judgment, it becomes tedious, and productions I have seen repeatedly overwhelmed by huge gobs of scenery and lighting effects and all the manifold properties sometimes will affect a production.

I have seen plays at a run-through that were absolutely unparalleled in beauty and joy, and when the production moved in and all the scenery, all the joy moved out of it. Money has to be used in a very careful and precise way.

Q Does a director have any responsibility whatsoever in connection with the budget of the play?

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Traube - direct

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1
2 A No.

3 Q Does he make any decisions in connection with the
4 budget?

5 A He makes no decisions about that budget at all.

6 Q Is he authorized to expend any monies?

7 A Only in very limited instances. I heard Herman
8 Levin in court testify that there have been examples on
9 his productions where a director may have bought some in-
10 expensive hand props. But nothing of any consequence may
11 be ordered by a director without the consent of the producer
12 or his representative.

13 THE COURT: I am not quite sure what the point is
14 about Destry Rides Again. I gather Mr. Traube tells us
15 that Mr. Merrick was running up and down the aisle shouting
16 instructions at everybody, but I guess my question is, so
17 what? Did anybody pay any attention to his instructions?
18 Did anything get done differently because he was running up
19 and down the aisles shouting instructions? I would suppose
20 if you put money into something you are entitled to run up
21 and down the aisle and shout instructions. I guess there
22 is more point to it than just that.

23 THE WITNESS: Your Honor, I only characterize
24 it because I thought Mr. Merrick was being singularly disin-
25 genuous. He had been around the theater long enough to know

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2 that producers are not disinclined to express their opinions
3 and to exercise their judgments and they do in fact come to
4 rehearsals.

5 I got the impression from him that he didn't even
6 attend rehearsals, much less express any opinions to his
7 directors or various other people connected with his produc-
8 tion staff.

9 THE COURT: You understand, Mr. Traube, I am
10 sure, that the question here is not whether he comes to
11 rehearsals and runs up and down the aisle, but the extent
12 to which a producer exercises control over a director.

13 THE WITNESS: Well, I can tell you, your Honor,
14 I saw the director on this particular production making notes
15 based on some of the demands that Mr. Merrick was making
16 that night about the production. So Mr. Merrick must have
17 been having some effect on him.

18 THE COURT: Well, Mr. Merrick said that he had
19 discussions is the way he put it. I assume that when Mr.
20 Merrick said he had discussions that perhaps it was more than
21 just a peaceful chat over coffee. But the question is,
22 does the director feel bound to accept his notions or is there
23 some independence and --

24 THE WITNESS: Well, only in this sense, your
25 Honor: I have also listened to a series of questions

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1 raised here in examining of witnesses appropos of directors
2 who have such a plethora of employment opportunities, and
3 I submit that this is errant nonsense, this is never-never
4 land. There is no such opportunity of employment in the
5 professional theater.
6

7 The jobs are precious few and very hard to come
8 by, and directors, when they are employed by producers, are
9 very responsive to their needs and wishes because their
10 whole professional future and their ability to support their
11 families depend on that relationship.

12 THE COURT: Well, I had not gotten the impres-
13 sion, Mr. Traube, that there were a plethora of opportunities.
14 I am not laboring under that impression, if you have any
15 doubts about it.

16 All right, Mr. Gregory.

17 BY MR. GREGORY:

18 Q Mr. Traube, what is the practice in the industry
19 concerning the compensation of directors who are replaced
20 before the play is over?

21 A The director is paid in full for his services.
22 By the terms of his contract.

23 Q Is that the position that the Society takes?

24 A Yes, it is.

25 Q What is the rationale for that position?

1 cmsr

Traube - direct

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1
2 A As has already I think been produced in testimony
3 during the course of this trial, the director spends many,
4 many months working in advance on the production. The fee
5 he is going to receive is only a partial recompense for that
6 work, and in many, many instances when he is replaced, his
7 work continues to remain in the production.
8

9 The position of the Society and the policy of the
10 Society is that he is recompensed for that.

11 Q Do you know of any instance where a director has
12 been discharged by a producer over a dispute in connection
13 with an artistic aspect of a play?

14 A I have had no personal experience of this at all.
15 I did hear Herman Levin make reference to the director who
16 was dismissed shortly before We Interrupt This Program went
17 into rehearsal. I had heard something about that out in the
18 marketplace.

19 Q When a times comes in the production of a play
20 that thought is given to the replacement of an actor, who is
21 the person who makes the decision that an actor will be
22 replaced, or will not be replaced?

23 A The producer.

24 Q To your knowledge, are directors of motion pic-
25 tures represented by a union?

A Yes, they are.

Q To your knowledge, are directors of television programs represented by a union?

A Yes, they are.

Q Are you familiar with the Society's unfair list?

A Yes, I am.

Q When was the last time a producer was placed on the Society's unfair list?

A I believe it was in the instance of Mr. Julien's reluctance to pay a judgment after an arbitration award to Mr. Reginald Denham.

MR. GREGORY: Thank you, Mr. Traube.

THE COURT: Mr. Kassel, how long do you expect your cross-examination to be?

MR. KASSEL: Not more than a half hour.

THE COURT: All right, we will take a short recess.

[Short recess.]

THE COURT: Mr. Kassel.

CROSS-EXAMINATION

BY MR. KASSEL:

Q Mr. Traube, you testified that the reason for the formation of the Society was in a sense the victimization of directors prior to the organization.

Were not authors also victimized prior to the

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Traube - cross

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1
2 Q Is there anything other than the minimum fees
3 and royalties insofar as working conditions are concerned?

4 MR. GREGORY: Your Honor, I object. The
5 document obviously speaks for itself. Unless Mr. Kassel
6 is trying to test the recollection of Mr. Traube.

7 THE COURT: Well, it seems to me that's right,
8 Mr. Kassel. We have the agreement in evidence, both of
9 them. I don't see any point in testing Mr. Traube's recol-
10 lection.

11 If you have questions about the significance of
12 some of these provisions perhaps they would be proper, but
13 I don't think we need to find out from him what the agree-
14 ments say.

15 MR. KASSEL: All right then, I will withdraw
16 that, sir.

17 Q Insofar as the practice in the industry is con-
18 cerned there are no working conditions set for directors,
19 are there?

20 A The practice of the industry is that the direc-
21 tor will rehearse the actors within the proscribed conditions
22 that are set forth by the Actors Equity requirements and
23 that he will rehearse to the best of his ability.

24 Q And insofar as his work without the actors,
25 for example, when he works on the play, or when he discusses

1 cmsr

Traube - cross

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2 matters with an author, he pretty much sets his own time,
3 does he not?

4 A Yes, that's correct.

5 Q You referred to The Ashes of Mrs. Reasoner being
6 presented in Paramus. How long does a play usually run in
7 Paramus?

8 A Eight days, I believe, ten days.

9 Q Who directed the play in Paramus, by the way?

10 A I believe Mr. Philip Rose.

11 Q Do you know who the actors in it were?

12 A No, I don't.

13 THE COURT: Is that the same Rose that we
14 talked about earlier?

15 THE WITNESS: Yes.

16 THE COURT: He was the director this time.

17 THE WITNESS: Yes.

18 THE COURT: Not the producer?

19 THE WITNESS: That's correct.

20 Q On your direct examination you stated that a
21 producer can overrule a director's artistic decisions. If
22 a producer does tell a director that he overrules his artis-
23 tic decisions, in your opinion is the director in violation
24 of his obligations as a director if he refuses to accept
25 the producer's decision?

1 with the situation you describe. In my long experience in
2 the theater, the theater works in a very sophisticated,
3 adult way where there is a consensus arrived at where the
4 author has a strong vested interest in the venture and in
5 the production of his play, the play that he has written.
6 In concert with the director. In concert with the producer.
7 And frequently with the star they arrive at a considered
8 mutual understanding of what they are trying to achieve.
9 And people try to adjust to each other.
10

11 Q And having --

12 THE COURT: Well, what was the thrust pretty
13 much it seemed to me of the testimony of Mr. Merrick, Mr.
14 Levin and Mr. Julien, that if there is something that the
15 director and the producer disagree about they talk about it.
16 And I also understand the thrust of their testimony was that
17 the producer will express his point of view, and if the
18 director doesn't agree, the director's view controls. Is
19 that your view?

20 THE WITNESS: No, sir. I think that in most
21 instances the consensus is arrived at and people agree to
22 a decision and it may not be the decision that any one of
23 them wanted, but a compromise arrangement.

24 I think however that when the chips are down
25 the producer's will is binding on the director. He is the

1 cmsr
2 employer of that director.

3 THE COURT: Of course if they do disagree and
4 the director won't go along with the producer, I take it
5 that the most that can happen at that point is that the
6 producer, if he wishes to do so, can fire the director.
7 But it is not for cause and the director continues to get
8 paid.

9 THE WITNESS: That's correct.

10 THE COURT: So the director in effect knows that
11 he is going to get paid whether or not he prevails in the
12 dispute.

13 THE WITNESS: Well, there is more than that
14 entailed, your Honor. The policy of the Society has been
15 that the director's applied enormous amounts of creative
16 energy and effort and work to the realization of this pro-
17 duction, and that his work continues to remain in the show
18 and that it would be iniquitable to deprive him of a con-
19 tinued interest in it. Beyond that at what point --

20 THE COURT: I am not saying that there was
21 nothing wrong about that, I am just trying to evaluate the
22 significance of the relationship.

23 THE WITNESS: But the other side of the coin is
24 that the producer might be exercising this effort on some
25 caprice, on some whim. He may be right, he may be wrong.

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Traube - cross

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The director may be right or wrong.

THE COURT: But the director, what I am suggesting is, and I am not quite sure what the consequence of this is in terms of this lawsuit. the director knows that he is going to get paid in any event, whereas the producer has got money into it, whether it is his own money or somebody else's, and if the play doesn't work he doesn't have any alternative, whereas the director, as I said, knows that he is going to be paid whether or not he prevails in the dispute.

THE WITNESS: Your Honor, that is equally true of the actors. They are going to get paid. If an actor has a run of the play contract he will be paid for the entire run of the play.

THE COURT: I am not suggesting for a moment, Mr. Traube, that I have made any moral judgment about whether this is good or bad.

THE WITNESS: I understand that.

THE COURT: I am just saying --

THE WITNESS: I am merely trying to note the practice in the theatrical profession, that's all.

THE COURT: All right.

BY MR. KASSEL:

Q Will actor be paid if he refuses to accept the

instructions of a director, if he is adamant in that area?

A Yes, he will be paid two weeks' salary if he has a two-week contract.

Q If he has a run of the play contract?

A He will be paid for the run of the play. He will have to make out a strong case against the actor not to pay him.

Q Assume a case where a director instructs an actor how to read a line, where to come in, where to stand, and the director refuses and he is discharged. He has a run of the play contract. Will he be paid?

A I have never heard of an actor doing this.

Q You have never heard of actors refusing to accept directions?

A Not in my experience. Actors try their best to do what the director asks them to do.

Q In your experience and in your understanding of the industry is an actor obligated to accept the directions of a director?

A Yes, and I have never known any of the actors who appeared in any of my productions who ever refused to do what I told them.

Q And if they did refuse, in your opinion would they be violating their obligations?

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Traube - cross

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2 MR. GREGORY: Objection, your Honor. Again it's
3 hypothetical.

4 THE COURT: Yes, I think so. Sustained.

5 MR. KASSEL: Your Honor, he is testifying as an
6 expert. Well, I will continue on another vein, your Honor.

7 Q The practice in the industry --

8 THE COURT: Mr. Traube said he doesn't know
9 that it's ever happened, so what good does it do us to learn
10 what he thinks might happen if it did happen? That is my
11 problem.

12 MR. KASSEL: I am not questioning your Honor
13 what has happened. I am merely questioning what is the
14 understanding in the industry as to the obligation of an
15 actor, as to the obligation of a director. And I am direct-
16 ing my question, if I -- shall I continue, or --

17 THE COURT: Yes, go ahead.

18 Q Mr. Traube, the understanding in the industry
19 concerning what an actor must do if he fulfills his require-
20 ments as a matter of custom in the business or as a matter
21 of contract, is he required to obey the instructions, the
22 directions of a director?

23 A His obligation is to give the best performance
24 he can as the director guides him through the rehearsals of
25 the play. And that's the way the professional theater works.

Q And if he fails to accept the guidance of the director is he not violating his obligations?

A Are you suggesting that he is inadequate as an actor?

Q I am suggesting that he has a will of his own and he is not following the directions of a director. I am asking whether the opinion in the industry would be that he must follow the directions of a director?

A I repeat, I have never had this experience and I have worked with hundreds of actors.

THE COURT: It seems to me, Mr. Kassel, he has answered the question. He said his obligation is to do the best job he can as the director guides him. I think that answers your question.

Q A director generally makes notes, does he not, in the course of --

A I never make notes.

Q Do most directors make notes?

A Not to my knowledge.

THE COURT: Do you make mental notes?

THE WITNESS: Yes. Yes, we do.

Q To whom does stage business belong in your opinion?

A In my opinion it' the property of the director,

cmsr

Traube - cross

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Q You were testifying concerning the rationale as you see it of a director being paid even after he is discharged. If a director is discharged very shortly after he is hired, say during the preparation period, is he still paid as though he had not been discharged if it's discharge not for cause?

A That's correct.

Q If a producer decides to replace or not to replace an actor and the director rejects his decision, what recourse does the producer have?

A Again, this is an experience that I have never had.

Q Have you heard of it occurring in the theater?

A No. I have no experience with the kind of conflict you are describing in the theater.

Q Didn't Mr. DaCosta testify to that conflict concerning Judy Holliday for example?

A They arrived at a conclusion where he consented to accept Miss Holliday even though he thought it was wrong.

Q Are you stating that it is his obligation to accept the decision of the producer in the industry?

A I think in the final analysis the producer's judgment is binding on the director, yes.

Q So that if a director does not accept the pro-

1 cmsr

Traube - cross

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2 ducer's judgment there he may be discharged for cause, would
3 you say that?

4 A That's not for cause, no, that's just an artistic
5 disagreement.

6 Q Let's go on now to the question concerning
7 motion picture directors. You referred to the fact that they
8 have a union.

9 THE COURT: Why do we need to get into that,
10 Mr. Kassel?

11 MR. KASSEL: If I may, sir, very briefly, it's
12 because there is such a sharp distinction between the posi-
13 tion of a motion picture director and a stage director that
14 I think it illustrates why one is an employee and the other
15 is not.

16 THE COURT: Well, all right. I suppose so.
17 I am not sure that the testimony on this on direct was par-
18 ticularly pertinent, but, all right, go ahead.

19 MR. KASSEL: I will drop it if your Honor --

20 THE COURT: No, go ahead.

21 Q Will you agree that the custom in motion pictures
22 is that the producer sets up a shooting schedule for the
23 picture and the director follows that shooting schedule to
24 the point of the day and the hour of rehearsing and shooting
25 the scene?

JAY JULIEN,

- v s -

68 Civ. 5120

SOCIETY OF STAGE DIRECTORS
AND CHOREOGRAPHERS, INC.

May 23, 1975

[10:00 a.m.]

[In open court.]

THE COURT: You may proceed, Mr. Gregory.

MR. GREGORY: Mr. Feuer.

C Y F E U E R , called as a witness in behalf of
the defendants, having been first duly sworn by the
Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. GREGORY:

Q Mr. Feure, will you tell us what your occupation
is.

A I am a producer of theatrical projects and films.

Q Are you also a director?

A Yes, I am.

Q Are you a member of the League of New York
Theaters?

A Yes, I am.

Q Are you a member of the Society of Stage Direc-
tors and Choreographers?

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Feuer - direct

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1
2 A Yes, sir.

3 Q Have you produced Broadway plays?

4 A Yes, I have.

5 Q For how long a period have you been producing
6 Broadway plays?

7 A About 25 years.

8 Q Will you tell The Court the names of some of the
9 plays that you produced?

10 A Mostly musicals for Broadway. Where's Charlie,
11 Guys and Dolls, Can Can, Silk Stockings, The Boy Friend,
12 How to Succeed in Business Without Really Trying, Little Me,
13 Walking Happy, Scyscraper, Goodbye People, and I think there
14 might be one or two that I have left out, but that's about
15 it.

16 Q Did you direct any of those plays you just
17 mentioned?

18 A Yes. Let me see. I directed Silk Stockings,
19 Little Me, Walking Happy, Skyscraper and subsequently I
20 completed the direction on the Boy Friend.

21 Q You have also done some film productions?

22 A Yes.

23 Q Tell us your experience in that area.

24 A Well, I have only produced two films. One was
25 Cabaret, and an unreleased film based upon the life of Edith

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Feuer - direct

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2 Piaf.

3 Q Restricting yourself now to the role that you
4 played as a producer in Broadway production, will you the
5 The Court what is the typical way that you go about hiring
6 a director for such a show?

7 A Well, I'd have to apply this mostly to musicals,
8 because my experience has been restricted to those. Our
9 procedure is to, usually, to initiate the project by select-
10 ing the subject matter. We then --

11 Q By subject matter, you mean the --

12 A Well, the property, an idea, a novel, an old
13 movie to be adapted into Broadway musical form. Do you mind
14 if I take this stepwise to get to the director? It's a
15 little easier to do it that way.

16 Q All right.

17 A Having done that we usually then decide upon
18 our writers. Usually a writer for the book, and then two
19 others, one for the lyric and one for the music, or some-
20 times one for lyrics and music if the composer happens to
21 write both. And having done that, we go to work on the
22 property, on the project, and develop it, and usually into
23 a first draft form, or, call it a first draft form, at which
24 point we begin to look for a director.

25 We then go to a director and bring him into the

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2 project at that time. That's our procedure for doing it.

3 Q Would you say that at that point in time that
4 you bring in the director that the producer and the author
5 have already decided upon certain concepts in connection
6 with the presentation of that play?

7 A Yes, but this varies, I must point out. In
8 some cases where a director doesn't have any other function
9 it would apply. We would bring him in at the point when
10 the idea had been completely formulated. The reason that
11 I said in some cases is that frequently, in my experience
12 with my shows, sometimes the author has also been the
13 director and consequently he then in that instance would have
14 been involved from the beginning.

15 Q But in other instances where the author and the
16 director are different persons, concept had been formulated
17 by that time?

18 A Yes, it had.

19 Q Do you ordinarily interview or talk to a number
20 of directors before you decide upon one?

21 A Sometimes .

22 Q What are you looking for specifically when you
23 come to select a director? What do you have in mind when
24 you start thinking about who I want to direct this play?

25 A Someone who would be sympathetic with the point

cmsr

Feuer - direct

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1 of view that we develop at that point. We bring someone
2 in who would agree with what we have done, or if any modi-
3 fications are to be made, we listen to his point of view
4 about it, his criticism as to what's been done, and if it's
5 too extreme, or doesn't agree with the direction which we
6 want to proceed on, we don't go along with him.
7

8 On the other hand, if it's constructive and
9 seems to further the road down which we are going -- we are
10 looking for creative compatibility with what we have already
11 done by and large.

12 Q I suppose you hope to achieve that in every time
13 in order to secure successful production.

14 A I'm sorry, I didn't hear that.

15 MR. GREGORY: I will withdraw the question.

16 Q You produced the Broadway production of Guys and
17 Dolls?

18 A Yes.

19 Q Who did you hire first in connection with that
20 production?

21 A We hired the composer first, and then the author,
22 the book writer.

23 Q Did you work with those people for a period of
24 time before you hired the director?

25 A Yes.

1
2 Q For how long?

3 A Oh, about a year.

4 Q Then you hired the director. Who did you hire?

5 A George Kaufmann.

6 Q Was he a well known director at the time?

7 A Yes. Very well known.

8 THE COURT: Was he the playwright?

9 THE WITNESS: Yes.

10 THE COURT: I didn't know he was a director.

11 THE WITNESS: Oh, yes. A very prominent direc-
12 tor.

13 Q He was not the playwright of this particular
14 play, though, Guys and Dolls?

15 A No, he wasn't.

16 Q During the course of putting that play together
17 did you as producer and Mr. Kaufmann as the director have
18 some differences of opinion about one aspect of that play?

19 A Yes, we did.

20 Q Tell The Court what that was.

21 A Well, we were in Philadelphia, the play was out
22 of town and it was very successful. It was obviously a hit
23 of some kind. It was a hit in Philadelphia, I mean, we
24 always suspicious at that becuse it could be a difference
25 between what happens there and what happens in New York.

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At any rate, my partner and I, I am in business with Ernest Martin, our company is Feuer & Martin Productions, we have been together since we have been in the theater, and we are still together.

So, when I say we, I am referring to my partner. We were very unhappy about a sequence in the first act which we considered very weak. The show picked up subsequently in the second act and made it, but there was something very wrong in the first act. There seemed to be a scene missing, something definitive.

But, we couldn't put our finger on it, and it was a very difficult thing of not being able to express it. We all kind of felt it, but Kaufmann, who sort of had taken over the guidance of this thing, we would defer to George because of his position, also his talent. He decided that it was good enough, that we good make it.

My partner and I decided it wasn't, that it should be worked on. And we had many meetings about this, and it became, let me say, somewhat unpleasant. They said that we were on their backs, and we were accused of being destructive. And we were very unhappy about it as a group and we kept at it.

We still had about two weeks left in our run in Philadelphia when this happened. And meanwhile it was

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1 very difficult to pursue this argument because the people
2 came in at night and all of the, some visitors from New York,
3 would come down and everybody would come back after the show
4 and congratulate everyone, and at the same time we knew that
5 the show needed something and that if we -- we were worried
6 about being, just being too passive about it. In other
7 words, our energies were running down because of the reaction
8 to the show.
9

10 We knew that there was something wrong in the
11 first act, and we kept at it to the point where it was very
12 difficult, the relationship between Kaufmann and the writer
13 and us became very strained. But as a result of this one
14 night we got a call from Kaufmann to come down. The book
15 was written by Abe Burroughs, he and Burroughs were down
16 in the room together, they called and said, what do you
17 think of this as an idea, and it was absolutely brilliant
18 to fix the first act.

19 Up to this point he said it was no problem, but
20 the solving of it showed it was a problem, and if we hadn't
21 continued at it and yelled at the umpire we would never have
22 got it done. That was specifically what it was. And it
23 really improved the show to the point where I think that
24 it contributed to the excellence of the show ultimately.

25 THE COURT: As a matter of curiosity, what was

1 cmsr

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2 it?

3 THE WITNESS: Do you remember the show?

4 THE COURT: Yes, very well.

5 THE WITNESS: Well, Si Masterson had to take
6 Sarah Brown to --

7 THE COURT: To Cuba.

8 THE WITNESS: To Cuba. And we didn't quite
9 know how to tell that. We did it very lamely. We had a
10 scene which kind of didn't work. It just laid there. There
11 was no song in it, it was sort of tagged on. It was not
12 funny, and it kind of -- because it wasn't funny and because
13 it wasn't musical it was kind of a stretch of the credulity.14 You didn't kind of believe that she would go
15 with him. And finally the idea that they came up with was
16 this, and it worked like a charm, and it just lifted the
17 whole act up. It sounds kind of silly, but musicals are
18 frequently solved by serious solutions.19 We had established that Sarah Brown worked in
20 this little Salvation Army band. She led it. And they had
21 their Save The Lord, Save Our Soul mission thing, and her
22 father played the base drummer, we had established that
23 earlier.24 We reiterated that at one point in the first
25 act, and finally after we noted the bet was made for Si to

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1
2 take her they decided to do a cross with the little band
3 with Sarah missing which indicated that she was no longer
4 there, and it was as simple as that. The band came across
5 playing their little thing and when everybody reacted that
6 Sarah was missing you knew that the guy had won his bet,
7 and it just lifted the act right up.
8

9 Prior to that we didn't have it and these guys
10 said we don't need it, well, we did need it. A little thing
11 like that made the difference.

12 BY MR. GREGORY:

13 Q Is it your opinion, Mr. Feuer, that if you and
14 your partner had not persisted in feeling that that change
15 had to take place that it would not have taken place?

16 A It wouldn't have taken place. There was nothing
17 written, it was a stage device.

18 Q What role do you play in the rehearsal period
19 of a production of a play?

20 A Well, in my particular case I am very close to
21 it. My partner handles the business end of things, and I
22 stay with the rehearsal, stay with the production on an
23 hour-to-hour basis.

24 Q You are there every day?

25 A Yes.

Q Every hour?

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A Right.

Q Every minute?

A I would say so.

Q And what do you do at rehearsals? What role do you play there?

A Well, I participate creatively. I am a musician, I started out as a musician, so when we do musicals, musicals are rehearsed in groups. In other words, at a musical rehearsal there would be four rehearsals that I can think of that take place simultaneously. The book would rehearse in one room, the musical director would be working with the chorus group in another room, the choreography room in the other room, and the coaches would be working with principals on their songs in the fourth room. So this has to be coordinated and I kind of go from one to the other.

Well, I just kind of oversee it.

Q Do you enter into the decision making process in connection with the artistic aspects of a play?

A Yes, I do.

Q Could you give us some examples of what you do in that area and how you do it?

A That's hard to do. You mean during rehearsal?

Q Yes.

A Well, most of the creative stuff is ironed out

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1 prior to rehearsal. Your rehearsal is precious. There is
2 never enough time, so you try to make it all count. And
3 so it isn't a matter of participating creatively at that
4 time, you usually have your arguments or your discussions
5 about what's to be done before you go in, and then if there
6 are any problems you do it afterwards.
7

8 During the actual rehearsal I just go from one
9 room to the other to see that everything sort of will dove-
10 tail and we put it all together and keep an eye on it.

11 I discuss it with the various people who are in
12 charge of these rehearsals as the rehearsals go, but never
13 on a very disruptive basis. I save that for after hours.

14 Q On these discussions that are had before re-
15 hearsals start do you participate in those discussions?

16 A Yes.

17 Q With whom?

18 A The authors, with everybody. All the creative
19 people.

20 Q Including the director?

21 A Yes.

22 Q And that's where your problems are ironed out,
23 if you have any?

24 A I am sorry?

25 Q Is that where your problems are ironed out or

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Feuer - direct

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your attempt to iron out your problems?

A Right. Yes.

Q You also produced How to Succeed in Business?

A Yes.

THE COURT: I didn't hear that.

MR. GREGORY: How to Succeed in Business.

A How to Succeed in Business Without Really Trying is the title.

Q Was there a particular problem in the production of that play with an actor which you were involved in? Who was the director of that play, by the way?

A Abe Burroughs. Well, it was -- we had an actor that was very broad.

Q What do you mean by that, broad?

A Well, his performance was, how can I identify what broad would be? He was the sort of a person who expressed himself physically with moves and physical business.

Q Overacting?

A Yes, I guess you could call it that. And I knew it was going to be a problem. And when I saw it happening I warned Abe about it. I said, you ought to get on this right away, because it's liable to get away from you because the further into this we go and the more secure

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1 he goes, the wilder he is going to get. And in general,
2 there wasn't any specific, but I knew there was a problem
3 and I knew it's the kind of a problem that's irritating to
4 a director, because he's got a lot of things to pay attention
5 to and he also likes to let people develop, and in this case
6 I knew it was going to get out of hand and I kept at it,
7 and we have since reminisced about it, about how I just
8 stayed on his back about it.

10 Q Whose back?

11 A Abe Burroughs' back, the director's back. And
12 by chipping away at it, we did control it. It was something
13 that was necessary to control. It was important that this
14 performance be kept down, or kept within the bounds of
15 reasonability.

16 Q Was the role played there unusual as far as
17 you are concerned?

18 A Well, I don't know. Remember, I never worked with
19 other producers.

20 Q I am talking about yours now.

21 A What?

22 Q In your own experience was there a role that
23 you played in that particular play something unusual for
24 you?

25 A No, not for me. I discuss these things with

1 the directors all the time, the actor was unusual more
2 than my discussion.
3

4 Q You said that in a musical you have four groups
5 rehearsing, you may have four groups rehearsing at the
6 same time; is that correct?

7 A Right.

8 Q Who schedules those rehearsals?

9 A It's usually done by the production stage manager.

10 Q For whom does he work?

11 A He works for me.

12 Q Do you permit your directors to bring in their
13 own stage managers?

14 A I never have, no.

15 Q Do you hire stage managers play after play?

16 A Well, I usually, my habit has been to engage a
17 production stage manager who works for my office, and I
18 move him, he stays with the show until we do a new show,
19 then I move him into my new show and replace him in the old
20 one. And he stays with me. I have had only about two or
21 three men over the many years, but they have each stayed with
22 me over a span of years.

23 Q Other than scheduling rehearsals, what other role
24 does a stage manager play in your production?

25 A Well, I don't know how to identify what a stage

1 cmsr

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2 manager does. He is really the backstage boss, you could
3 call him.

4 Q Backstage boss?

5 A Right. And he also is preparing this rehearsal
6 in anticipation of running the physical show from his desk.
7 So he is occupied with keeping his cueing, identifying his
8 cueing and relating that to light cues and to physical
9 moves, and he has to evaluate, as we do, time for costume
10 changes so that you don't rehearse something that you can't
11 possibly manage.

12 In other words, you can't schedule someone to
13 come on stage and then follow himself with a different
14 costume two minutes later, you know, and things like that.
15 He is usually preoccupied with all this detail. And he has
16 an assistant or two. But he is really the production boss.

17 Q I assume that in your musical production you
18 hire a scenic director and a costume director?

19 A That's right.

20 Q Have you ever hired those people before hiring
21 the director?

22 A No.

23 Q Have you ever hired a star before hiring the
24 director?

25 A Yes.

1
2 Q Do you ever give cast approval to a director
3 in their contract?

4 A I think so. I don't remember specifically, but
5 I wouldn't have any objection to doing that.

6 Q You feel that a director should have cast ap-
7 proval?

8 A Oh, yes. I think that's --

9 THE COURT: What does that mean, cast approval?

10 THE WITNESS: Approve of who you engage to
11 appear in a play. Approval of your actors, really.

12 Q Why do you feel that a director needs or should
13 have cast approval?

14 A Well, when I engage a director I am engaging
15 someone that I am going to work with creatively well. I
16 respect him and I don't see any reason that he shouldn't
17 approve the actors who are engaged. After all, he is going
18 to direct them, it seems reasonable to me.

19 THE COURT: When you say cast approval, does
20 that mean that he has the last word?

21 THE WITNESS: No. He has the approval. You
22 must have his approval before engaging anyone. If he dis-
23 approves, then it's up to us to either persuade him to do
24 it or argue him out of it or agree with him. We give that
25 cast approval as well to the authors.

1 THE COURT: What if you don't agree with him?

2 THE WITNESS: Well, I don't quite remember how
3 the cast approval clause is written.

4 THE COURT: Has it ever happened where you
5 disagreed with the director in the last analysis --

6 THE WITNESS: Yes, we all disagree.

7 THE COURT: I mean in the last analysis where
8 he said, I want so and so, and you didn't? What happened?

9 THE WITNESS: I can't give you an example of
10 that. It's been my experience that -- I have never had an
11 experience --

12 THE COURT: You don't get to that point?

13 THE WITNESS: You never do. I mean, you just
14 don't. You manage somehow. I give in or he would give in,
15 and remember that there are a lot of people, so if you lose
16 one, you win another. Especially in a musical where we
17 have thirty or forty people in the cast sometimes. Not
18 like a play where there might be two or three.

19 BY MR. GREGORY:

20 Q Do you consider a director an employee of yours?

21 MR. KASSEL: Objection, your Honor.

22 THE COURT: Yes, sustained.

23 MR. GREGORY: Your Honor, the plaintiff has
24 heavily relied upon the restatement of agency. In fact,
25

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2 a good part of his trial brief relates to the restatement
3 of agency. One of the criteria that the restatement suggests
4 in determining whether or not the employer has an employee
5 relationship exists is --

6 THE COURT: I think, Mr. Kassel, I will allow
7 the question on reflection. The question is, do you regard.
8 The question was not, is he. Which I think would clearly
9 be an improper question. What he thinks about the relation-
10 ship I guess is proper. I will allow it.

11 MR. KASSEL: May I just make one point on that,
12 your Honor? I think insofar as what the parties regard
13 depends on what they believe the fact to be from which --

14 THE COURT: That's right. I think whatever the
15 answer is here it's only meaningful in light of Mr. Feuer's
16 actual relationship. I will allow the question for what
17 it is worth.

18 I think Mr. Gregory you ought to find out from
19 the witness -- I will allow the question, but I think you
20 ought to find out what he means by employee.

21 MR. GREGORY: All right. Just to complete my
22 thought, your Honor, the restatement says, whether or not
23 the parties believe they are creating the relationship of
24 master and servant.

25 THE COURT: Yes. All right. I think that is

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1 where I say want this performed in a certain way and he
2 says I won't do that, it's a violation of my creative
3 integrity, and I am not going to do that at all. If you
4 want it done, do it yourself or I quit, or whatever.
5

6 THE COURT: But you have still got to pay him,
7 as I understand it.
8

9 THE WITNESS: Well, I don't know. If he quits -

10 THE COURT: The contract provides that if you
11 fire not for cause you still have to pay.

12 THE WITNESS: Probably do. I am not aware of
13 the contract. I know that with an actor for instance if
14 you tell an actor to do something he doesn't want to do it,
15 you don't have to pay him, you can fire him without paying
16 him. But I don't know if this applies to a director. I
17 haven't looked at the contract.

18 BY MR. GREGORY:

19 Q Suppose he has a run of the play contract, the
20 actor, and you fire him?

21 A My experience has been if you fire him you have
22 to pay him. If he quits you don't. I think. I haven't
23 seen one of these contracts for five or six years, but my
24 experience at that time was that if he were to leave you,
25 you don't have to pay him.

THE COURT: Well, what I am getting back to,

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2
3 MR. GREGORY: I am just following through with
4 what was just developed here. If I understand Mr. Feuer's
5 testimony he is going to follow up to make sure that the
6 director maintains that standard. He is going to be on the
7 scene. It's not like turning the lawyer loose. He is not
8 going to go down to the lawyer's office and --

9 THE COURT: I see what you are saying. Yes.

10 MR. GREGORY: I am saying that the secretary
11 he is in the office --

12 THE COURT: The lawyer looks at all the right
13 cases, the director, he does make sure does the right thing
14 with his play. I guess there is an appropriate analogy
15 here. I am not sure.

16 Q Let's turn to The Boy Friend.

17 A Right.

18 Q That play was originally staged in England; is
19 that correct?

20 A That's right.

21 Q Will you tell The Court the circumstances under
22 which you brought that play to New York?

23 A Well, we saw the play in the West End of London
24 after it originally started in the equivalent of off Broad-
25 way there, and it was an enormous success. We made a deal
to bring it to New York. But it was a delicate little thing.

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Feuer - direct

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2 It was very stylized. It was important to maintain
3 that. And, in order to do so I had seen about nine or ten
4 performances of the show myself, and then what we did was
5 we hired, we made a deal with the author who wrote every-
6 thing, words, music, book, lyrics -- lyrics, book and music,
7 rather. We hired the director, the English director. We
8 hired the choreographer and we took all of the designs and
9 costumes from them and made a deal to reproduce them here.

10 But further than that, to make certain that we
11 would be able to do the show exactly the way they did in
12 London I paid the company to do a performance I hired a
13 16 millimeter camera crew to photograph the show with sound
14 so that we could remember after having left London, we
15 could refresh ourselves by running the film to make sure
16 that we got an actual reproduction of it. Then we cast it
17 about 80% in England.

18 We got permission from Equity to do that. If
19 we hired a few chorus people here. It was a small company.
20 We brought Julie Andrews over for the first time. And we
21 were two weeks in rehearsal --

22 Q In New York?

23 A In New York. We had now come into New York.
24 And we were two weeks into rehearsal and I walked into the
25 theater one day, we were rehearsing on the stage that day

1 and the director was doing something I didn't recognize.

2
3 THE COURT: You said the director, you didn't
4 recognize --

5 THE WITNESS: The director was doing something,
6 she was staging something that I didn't recognize.

7 THE COURT: But you recognized the director.

8 THE WITNESS: Oh, yes. I didn't mean that.
9 But I didn't know what the devil it was that she was doing.
10 And for awhile I thought it was some kind of an exercise
11 with the actresses or something she was doing to illustrate
12 a point, and I realized there was something going on up there
13 that I didn't know about and I asked her what it was, at
14 which point the author said to me, well, this is something
15 that -- he had terrible combat with the English producers.
16 They never got along. And he said, this is something that
17 those heavy handed Englishmen over there made me cut out
18 before we got to the West End. This is some delicious
19 business that we are going to restore now that those guys
20 aren't around any more, you know.

21 And I said, well, no, I don't want you to do
22 that, because that's not what we bought. It's not our
23 arrangement. I want the show exactly the way it was in
24 London and I don't want to start getting into your problems
25 with your English producers.

1
2 And he said, well, no, I insist that we do this.
3 After all, this is my property and I own it, and he stood
4 on his contractual rights as an author to restore stuff that
5 they had cut out prior to the show coming to New York.

6 Q What position did the director take?

7 A Now I am saying the director was standing there
8 listening to this, and finally I said to him, I said, Sandy,
9 we are not going to do this. It's just not right. It's
10 just silly, the whole thing. And I said to the director,
11 let's not do it, let's just continue with the show as we
12 know it exists. And she was sort of caught in the middle.
13 She said, well, you'll have to make your peace with Sandy.

14 I said, no, I am telling you, I will take care
15 of Sandy, you do your job. You are supposed to put this
16 show on the stage the way we have all agreed that it would
17 go on the stage. And she didn't do it, and I fired her.

18 THE COURT: You fired --

19 THE WITNESS: Fired the director. And I also
20 ordered the author out of the theater. This was very well
21 publicized in all the New York papers. Especially in The
22 New York Times. There was a big to-do about it. About
23 throwing the author out of his own theater and all that,
24 which was kind of terrible, but at the same time it was very
25 disruptive and we just referred him to his lawyers and said,

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2 go and take legal action against us, but we did fire the
3 director.

4 THE COURT: Did you feel that you had only
5 purchased something very precise and you couldn't depart
6 from what you had purchased?

7 THE WITNESS: That's right. That was our under-
8 standing when we did it with the author, with the director,
9 with the English producers.

10 THE COURT: So that if you had done what the
11 author wanted to do you feel that you would have been doing
12 something that you hadn't purchased.

13 THE WITNESS: Yes. And also might have jeopardized
14 the success of the show. We bought something that was suc-
15 cessful --

16 THE COURT: It seems to me there is a difference
17 as far as we are concerned here. If you could only do what
18 you purchased, that's one thing, then obviously you couldn't
19 do anything else.

20 THE WITNESS: No, we could.

21 THE COURT: But if it's going to jeopardize the
22 result and you have some --

23 MR. GREGORY: I think there is a misunderstanding
24 here, your Honor. With your permission I would like to
25 bring it out.

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Feuer - direct

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THE COURT: All right.

Q When you say that you purchased this, was there anything in your purchase contract that limited you in the way you produced it?

A No.

Q Was this your own decision the way you wanted it produced?

A Yes, that wasn't restricted by contract to do this. I could have allowed him to put his stuff in if I wanted to.

THE COURT: I see.

THE WITNESS: It didn't make any sense to me. Here was a perfectly successful thing, now to go back to the troubles they had before might have jeopardized the success of the show. It was a little gem as far as I was concerned. I could have done it if I wanted to, but I chose not to and she stood with the author and I fired her.

THE COURT: So this was your own decision. You might have been wrong, but it was your decision.

THE WITNESS: Right. Then everyone was holding their breath to find out whether the show was going to win or lose. Luckily it turned out to be a hit.

Q Mr. Feuer, who controls the purse strings of a production of a Broadway play?

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Feuer - direct & cross

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1
2 A Well, in our case we do, the producer.

3 Q Does the director have any authority to spend
4 money?

5 A Not in my shows.

6 MR. GREGORY: No other questions.

7 CROSS-EXAMINATION

8 BY MR. KASSEL:

9 Q Mr. Feuer, you referred to chipping away at the
10 position of Abe Burroughs when you said he had a disagreement.
11 Finally the disagreement was resolved, I understand, in the
12 way you wanted; is that right?

13 A Yes. It was the way -- I'd have to modify that.
14 Burroughs really wanted it too, but he didn't get to it,
15 you know what I mean? And in the final analysis, which is
16 when we talked about it, we both wanted it. It was just
17 a matter of I was afraid he wouldn't get to it, and later
18 when we discussed it he was afraid of that same point, but
19 he did get to it.

20 Q Would it be correct then to say that what hap-
21 pened was that you persuaded him, it wasn't that you ordered
22 him and he had to follow an order?

23 A Right. I persuaded him.

24 Q You referred to the stage manager setting re-
25 hearsal schedules. The practice in the industry, must a

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Feuer - cross

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1
2 director follow the schedule that the stage manager sets?

3 A No. He can participate in that, reasonably,
4 of course.

5 Q In what year was The Boy Friend produced?

6 A Gee, I can't tell you that. I just can't
7 remember dates.

8 Q Can you tell me roughly? Was it before 190

9 A I think so.

10 Q It was before the agreements between the League
11 and the Society were --

12 A I believe it was.

13 Q Where there is a dispute between you or any
14 producer and a director, the usual way is to try to persuade
15 one another, is it not?

16 A Right.

17 Q And most of the time one would persuade the
18 other or they will come to some sort of a compromise; is
19 that correct?

20 A It is.

21 Q Where this does not work, where ultimately both
22 are adamant, what recourse does the producer have?

23 A Well, if he feels strongly enough about it he
24 can prevail, I guess.

25 Q You mean by personality?

1
2 A No, by insisting upon it, I guess. Contractually
3 I guess he could let the director go if he wished.
4

5 Q But if he did let the director go he would have
6 to pay him under the rules of the industry now; is that
7 right?

8 A Yes.

9 Q He would have to pay him as though he had not
10 let him go, that is the rule now, is it not?

11 A Yes.

12 Q You mentioned engaging stars before engaging a
13 director.

14 A Yes.

15 Q Which stars were those?

16 A Well, there is one that I can remember. We had
17 a show, the very first show we did, we had a show called
18 Where's Charlie, and I made the deal. We had never produced
19 a show before, but we went and saw -- the first guy we went
20 to see was Ray Bolger, and we said to Ray that we think
21 that Charlie's Aunt would be a good thing for you to do,
22 and when he agreed to do it, then I went to England and
23 got the property.

24 Now we had the property in Ray, and then I went
25 to Frank Loesser, who was a friend of mine in California,
and we had Frank and then we went to George Abbott.

1 cmsr
2 Q Is that rather unusual?

3 A Well, it's not unusual for me. I can't attest
4 to the rest of the --

5 Q What other stars or actors have you engaged
6 before engaging the director?

7 A Well, let me see. Let me try to think if there
8 are any outside of that one. In a lot of them I was the
9 director, so that eliminates it. That's about the only one
10 I can think of offhand.

11 Q One other point: You actually participate
12 greatly as a producer in watching rehearsals and seeing how
13 they go along.

14 A Right.

15 Q When you don't like something, as for example
16 your case with George Kaufmann, is the method one of per-
17 suasion?

18 A Yes, of course.

19 Q It's not the case of ordering and the man must
20 obey your order?

21 A Oh, no.

22 MR. KASSEL: No further questions, your Honor.

23 MR. GREGORY: No questions, your Honor.

24 THE COURT: Thank you very much, Mr. Feuer.

25 [Witness excused.]

THE COURT: We will take a short recess.

[Short recess.]

THE COURT: All right, Mr. Gregory.

MR. GREGORY: Mr. Forde.

L A R R Y F O R D E , called as a witness in behalf of the defendants, being first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. GREGORY:

Q Mr. Forde, what is your occupation?

A I am a production stage manager.

Q For how long a period have you been a production stage manager?

A Approximately five years, sir.

Q Have you been a production stage manager for Broadway plays?

A Yes, I have.

Q Can you name some of those plays?

A Children of the Wind, Grease, and, currently, The Ritz.

Q Were you not also a stage manager for The Rothschilds?

A Yes, I was the stage manager for The Rothchilds.

Q Is there a distinction between the stage manager

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and the production stage manager?

A Production stage manager is the head stage manager. There may be a few stage managers, three or four. Production stage manager is the top stage manager.

Q Could you describe for The Court generally what the duties and functions of the production stage manager are.

A The duties of a production stage manager in an original show, that is a show that has not been done before on Broadway or anyplace else, are you schedule the rehearsals, you pick the rehearsal space, you work very closely with all the creative departments, that is the director, the set designers, the lighting designers, the costume designers.

What you do is you coordinate the entire production so that when the show is eventually put on in front of an audience all various departments come together and work smoothly.

Q You are hired by the producer of the show?

A Yes.

Q To whom do you report?

A In my case I either report to the producer or the general manager.

Q Could you tell us the typical types of things that you would report to the producer or his representative?

A During the rehearsal process I would report how

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Forde - direct

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the rehearsals were going, whether we were proceeding in an orderly fashion, whether work was being done, whether the other creative departments were being consulted as additions were being made in the rehearsal process so that there were no surprises.

Once the show was opened, you report to the producer on the condition of the show, running times, any morale problems you may be having with the company.

What you try to do is establish a relationship with the producer so that you might talk to them for a half an hour each day and then they know exactly what is going on in that theater.

Q Has it ever occurred that a producer has told you to instruct the director, or take instructions back to a director?

A I have been asked in one instance with The Ritz, which I am currently with, we were trying out in Washington, D.C., and --

THE COURT: What is the name of the show?

THE WITNESS: The Ritz.

A A scene has been moved, what we call the prologue has been moved from one place in the show to another place in the show and the producer did not like where the prologue was now placed, and she came to me and she said, please be

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1 sure that the prologue is put back where it was. Now, in
2 this particular case I didn't have to do that because the
3 director wanted to put it back also.
4

5 Q If the director had not put it back, do you feel
6 that you had the authority to tell him to put it back?

7 A I had been given the authority by the producer
8 to tell him that she wanted it back.

9 Q Has that happened --

10 THE COURT: She, the producer, wanted it back;
11 is that right?

12 THE WITNESS: Correct.

13 Q Has this happened in other instances where a
14 producer has instructed you to give instructions or direc-
15 tions to a director?

16 A I can't think of any specific example. I have
17 had many vague conversations with producers about how a
18 show was currently being played, why was it done this way,
19 that kind of thing. But specific examples I'm afraid I
20 can't give you.

21 Q What does the production stage manager do after
22 the play opens? Do his functions change then?

23 A After the play opens, the production stage
24 manager is responsible for maintaining the artistic integrity
25 of the production and keeping it as close to the opening night

1 performance as he can humanly -- is humanly possible to do.

2 Q Does he act as a sort of a surrogate director?

3 A Yes.

4 Q Does that require you work rather closely with
5 the director before he leaves the show?

6 A Yes, you attend, as in the rehearsal process,
7 you attend all the rehearsals and you watch very carefully
8 to see what are the values that the director is attempting
9 to get out of certain scenes so that when you watch the show
10 after it opens you know what was the artistic -- what effect
11 was supposed to happen, and if it's not happening then you
12 can go back and work with the actors, refresh their memories
13 of what was talked about in rehearsal, or, in lots of cases
14 suggest new ways for solving the old problem.

15 Q In your experience as a production stage manager
16 have you become aware of producers making artistic decisions
17 in connection with the production of a play?

18 A Yes, I can think of two. One when I was the
19 production stage manager of Grease on Broadway the director
20 had approved a new cast replacement in the role of Danny
21 Zuggo, and the producers were not at all sure that he was
22 capable of playing that part even though the director had
23 already approved him.

24 I was asked to contact that actor and ask him
25

1 cmsr

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2 if he would come into the New York show and perform it for
3 awhile so the producers could watch him and that they could
4 make their decision whether or not they wanted him to play
5 the lead in their production.

6 THE COURT: You mean this is in another show,
7 or in the rehearsal stage of --

8 THE WITNESS: This was after the show had opened,
9 sir.

10 THE COURT: So that he was being considered to
11 replace somebody else who was in the show.

12 THE WITNESS: That's correct. They did not --
13 he was very different from the person that was currently
14 playing the role. He was not charming, he did not smile
15 a lot and the producers were used to somebody smiling and
16 being charming, and they had to be convinced that there was
17 another way of playing the role. They eventually were con-
18 vinced, and they did hire him.

19 Q Well, let's restrict ourselves to the rehearsal
20 for the tryout period when the director is still on the
21 scene.

22 Do you recall any instances where the producer
23 had made artistic decisions?

24 A Yes, in the Ritz we had an actor in the rehearsal
25 process that was not working out. He was consuming an

1 enormous amount of rehearsal time. I was concerned in
2 watching the director rehearsing with this actor, at the end
3 of a two-hour period, seeing that the director was exhausted,
4 and began to get very concerned. We talked about it and
5 we decided that the best thing to do was to replace that
6 actor. As it turned out, that actor was on the run of the
7 play contract which meant that his contract did not expire
8 until June 30th, so that in order for us to fire him we would
9 have to pay his salary until June 30th, or until the play
10 closed.
11

12 We contacted the general manager and the general
13 manager said, no, but he would ask our producer, and she
14 said no, I will not fire him, I can't afford to.

15 We struggled along for about another week, and
16 then I decided that maybe the best thing to do would be to
17 schedule a run-through of the show, invite the producer
18 to that specific run-through and let her make her own de-
19 cision.

20 We got halfway through act 1 and she turned to
21 me and she said, you're right, he has got to be let go.
22 And he was fired. Up until that point we had not been able
23 to get him fired.

24 Q In connection with The Ritz were any other
25 artistic decisions made by the producer during the tryout

1 cmsr

Forde - direct

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2 period?

3 A Yes . The Ritz rehearsed in New York and went
4 on an out of town tryout to Washington, D.C.

5 THE COURT: On this last one, what was the
6 position of the director?

7 THE WITNESS: He wished that the actor would be
8 fired and he was not allowed to fire him, the actor.

9 THE COURT: The producer did.

10 THE WITNESS: The producer did, yes. We had
11 recommended that the actor be fired.

12 THE COURT: I see. And you say the director
13 wished that he would be fired, but he wasn't allowed to do
14 so. I take it you mean he wasn't allowed to do so by the
15 director.

16 THE WITNESS: That's correct.

17 Q You were telling us about The Ritz on the out
18 of town period.

19 A We opened in Washington, D.C. The set was grey,
20 it looked like a battleship. When the house curtain went
21 up it looked like a battleship was coming at you.

22 The producer hated the color and said she
23 decided it had to be painted. She instructed me to call
24 her decorator and involve her decorator with the set designers
25 on the choice of color to paint the set. The set was

1 repainted in New York City and it's now red which is what
2 the decorator, her decorator wanted to paint it.

3
4 Q Did the decorator play any role in the change
5 of that color?

6 A If my memory serves me at that point he was very
7 busy in working with the actors and he didn't care what
8 color the set was.

9 Q The producer made a decision to change it?

10 A Yes.

11 Q Do you recall an instance in Washington during
12 the run-through of The Ritz when the producer was present?

13 A Yes. Mrs. Holtzer attended the opening of that
14 performance.

15 Q She is the producer?

16 A She is the producer. The performance did not
17 go too well. The reviews came out the next day. One review
18 was a scathing attack on the show. The other review was,
19 boys, you have a lot of work to do. Keep working because
20 you have got a good play.

21 She had several meetings that I was not a party
22 to. She left on a business trip and we proceeded to work
23 very hard for approximately ten days.

24 Then she came back to Washington, attended an
25 evening performance and at the conclusion of the performance

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the entire company was assembled and she had some comments about the work that had been done and some specific notes to some of the actors in the company.

Q She distributed those?

A Yes.

Q To the actors?

A Correct.

THE COURT: She gave you notes to give to the actors?

THE WITNESS: No, she stood up in the house, the auditorium and gave them herself.

THE COURT: I see.

Q And the director was present then?

A Yes.

Q Did you see any of those notes?

A I was not given a copy of those notes. I remember two specifically. One, there are approximately 60 doors on the set of The Ritz, and in order to -- theatrical conceit is that in order to open those doors you must use a key, and none of the actors up to this point were using keys to open the doors. And her comment was, I don't believe you are really in a bath house because you just open doors and walk in.

Another comment was she did not like the way an

cmsr

Forde - direct

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actor was singing a particular moment in the show. She thought he could be better. I think she spoke for approximately twenty minutes. But I don't remember any other specific notes but those two.

Q Have you experienced situations where the budget of a particular production affected the presentation of the play?

A Yes. Again in The Ritz there is a night club sequence in the show and we had initially wanted to bring the orchestra on. The orchestra consists of a piano, a drummer and a fender bass player. We had wanted them to ride in on a wagon. The only way we could get that wagon in smoothly was to use a winch which is an electric piece of machinery under the stage deck. It would have meant building up the stage deck approximately six inches, and the rental for the winch of approximately \$2,000.

That idea was immediately thrown out as too expensive. There are also six people in the show that, so now the orchestra is off stage and rather than the audience thinking the music is live, most people that attend the play think that all our music is recorded. It is not. It is done live.

Another instance, there are six people that wander around the stage in a three-tier set. Six people

1 cmsr

Forde - direct

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2 that wander around constantly. The director had wanted,
3 I think, nine to ten people to wander around to really give
4 that feeling of a lot of bodies. It was financially impos-
5 sible. So, what he worked out is that one of these bodies
6 would walk into a room with a towel, out he would come out
7 of another room two doors down with a bathrobe on hoping
8 to confuse the audience and making them believe there were
9 more patrons than we actually had.

10 Q This was something that the director had to
11 stage because the producer wouldn't pay for the ten; is
12 that what happened?

13 A That's correct.

14 MR. GREGORY: No other questions.

15 CROSS-EXAMINATION

16 BY MR. KASSEL:

17 Q Mr. Forde, with respect to your testimony con-
18 cerning your setting up of rehearsal schedules, is it not
19 correct to state that the director tells you what actors
20 to schedule for rehearsal at a particular time?

21 A It's done in various ways depending on the
22 relationship that is established between the director and
23 the production stage manager. Although the production
24 stage manager works for the producer, he can't do a good
25 job for the producer unless the director and he have a good

cmsr

Forde - cross

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relationship.

In this particular case we had a, probably the best relationship I have had in all my years in the business, and it was a question of the director and I talking to each other and he would turn to me and say, what do you really think we need to work on, or, how much time do you think it is going to take to do this? It was kind of a give and take situation.

There have been other cases where I have set up rehearsal schedules, directors have just abided by them.

Q Have you ever had a case where you set up a rehearsal schedule for an actor that the director did not want rehearsed at that time?

A Yes.

Q Would you state that, please.

A I know that it's happened, I can't think of any specific instances. But it has happened to me.

Q Would you say that the practice in the industry customarily is for the director to let the stage manager or production stage manager know who he wants to rehearse and possibly after discussion to make that decision, but to let the production stage manager know whom he wants to rehearse and then the production stage manager schedules that actor?

1 cmsr
2 A In the case of a play that is easier than it is
3 in the case of a musical. In the case of a musical also
4 the director has to work around costume fittings, shoe
5 fittings. They are ongoing and constant. And there have
6 been many instances in The Ritz, as other shows, where the
7 director wants to do one specific thing but someone is
8 scheduled to be at a costume fitting. If that fitting
9 doesn't happen at ten o'clock that means that the wardrobe
10 department can't get that costume ready by a certain time.
11 So the director has to bend.

12 I'm the one who is told by the wardrobe depart-
13 ment when people are scheduled for costume fittings. Also
14 the public relations department schedules interviews that
15 I am told about so that when we are working on a schedule
16 I can say, Earl Wilson is scheduled to interview so and so
17 tomorrow at 11:30, and that actor then is not used at that
18 particular time. Again it's a question of a relationship
19 between the two people. A mutual trust.

20 THE COURT: A great relationship between whom?

21 THE WITNESS: The director and the production
22 stage manager.

23 THE COURT: Well, are you suggesting that if
24 the production stage manager doesn't agree with the director
25 that there is a higher authority, the producer?

cmsr

Forde - cross

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THE WITNESS: Yes.

THE COURT: You are not suggesting that, you are just saying that, I take it.

THE WITNESS: Well, if a, say, NBC were going to -- wanted to photograph Actor A for presentation on the eleven o'clock news that evening, or a ten minute segment, and the director insists on working that day when the actor is seen that day, obviously a telephone call would be made to the producer and the producer's decision would obviously make the decision for it to go to television.

THE COURT: The producer would ultimately make the decision.

THE WITNESS: Yes.

THE COURT:

BY MR. KASSEL:

Q Are you stating then that if a director wants to rehearse Actor A and Actor A is scheduled for something else that he will say to the director, well, he is tied up, so whom else would you want to rehearse? Isn't that what it comes to?

A Yes.

Q But the director informs you whom he wants to rehearse and then, whether it is because of the relationship or because of the recognition of what has to be accomplished

1 if one man is out of the city or is at an interview, he
2 will you to bring somebody else, that's the procedure, is
3 it not?
4

5 A That's correct.

6 Q In the example you gave of the producer who
7 gave notes directly to actors, did the director object to
8 that?

9 A No.

10 MR. KASSEL: No further questions, your Honor.

11 MR. GREGORY: No questions, your Honor.

12 THE COURT: Mr. Forde, thank you very much.

13 [Witness excused.]

14 MR. GREGORY: Your Honor, as I indicated yes-
15 terday, my other witnesses will be available on Tuesday.

16 THE COURT: All right. Tuesday, May 27th at
17 ten o'clock.

18 [Court adjourned as above noted.]

19 * * *

2 JAY JULIEN,

3 - v s -

68 Civ. 5120

4 SOCIETY OF STAGE DIRECTORS
5 AND CHOREOGRAPHERS, INC.

6 May 27, 1975

7 [10:20 a.m.]

8
9 [In open court:]

10 THE COURT: Good morning.

11 MR. KASSEL: Good morning, your Honor.

12 MR. GREGORY: Good morning, your Honor.

13 Mr. Aaron.

14 P A U L A A R O N , called as a witness in behalf of
15 the defendants, being first duly sworn by the Clerk of
16 of the Court, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GREGORY:

19 Q Mr. Aaron, what is your occupation?

20 A Director.

21 Q Are you a director of Broadway shows?

22 A Yes.

23 Q For how long a period of time have you been
24 directing Broadway shows?

25 A For approximately six years.

cmsr

Aaron - direct

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Q Will you tell The Court the names of the more important of the shows that you have directed.

A 70 Girls 70, Paris is Out, That's Entertainment. Those are the three of the major Broadway shows. And then several off-Broadway shows.

Q What about Molly?

A And Molly.

THE COURT: I am sorry, I didn't get that.

THE WITNESS: Molly.

MR. GREGORY: Molly.

Q Did you also direct a play called Ring-a-levie?

A Yes. Which was a pre-Broadway tryout of a musical.

Q Who was the producer of that play?

A Neal Dubrock.

Q In connection with that play did you have a dispute with the producer concerning some changes in the play?

A Yes. The play had opened, the producer was very much present and in on all conferences and on the day following the opening the producer asked me to come to his office. I came from the hotel in the middle of the afternoon not expecting that -- normally the day after an opening one doesn't rehearse. And he said that he had been meeting,

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2 himself, with the playwright and wanted me to institute some
3 changes. Well, let me say that he wanted some changes
4 instituted, and either I was going to put them in and he
5 would hold the curtain that night and the cast would come
6 in two hours earlier and we would go to work --

7 Q What kind of changes was he referring to?

8 A Book changes. Changes in scene and some things
9 removed, other things added, and things which he felt per-
10 sonally were not working he wanted to make work.

11 MR. KASSEL: Objection, your Honor. Mr. Aaron
12 is testifying to a specific incident rather than to the
13 practice in the industry.

14 THE WITNESS: Well, may I answer that?

15 THE COURT: I am not sure I understand your
16 point.

17 MR. KASSEL: I feel that if he has had an incident
18 unless this incident represents the entire practice in the
19 industry it's not relevant here.

20 MR. GREGORY: Your Honor, the point of all the
21 testimony that the defendant is putting on is to establish
22 what the practice in the industry is. The only way to
23 establish that is to show what actually does happen during
24 the course of the production of a play.

25 THE COURT: Well, in a sense I suppose you are

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both right. We can't conclude on the basis of what has happened between three or four producers on the one hand and three or four directors on the other hand that we know anything more than just what happened in those three or four episodes.

On the other hand, I don't know how we can find out what happens in the industry without hearing what happens among individual producers and directors.

I think, Mr. Kassel, your point is that individual transactions don't add up to industry practice, and I suppose Mr. Gregory's point is that it may. I think that is something we are going to have to find out.

I would overrule the objection.

MR. GREGORY: May we have the Reporter read back the last question, please.

THE COURT: Yes.

[Question read.]

BY MR. GREGORY:

Q Were those changes made, Mr. Aaron?

A Yes.

Q What were the circumstances of --

A By the producer, not by me. I told him that I thought it was a mistake to rehearse a cast and had been under great strain to open and not give them a chance to play

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the show the same way twice before one made changes. So it was my opinion that even if some of those changes were viable ones they should be done the following afternoon, as is normally the case. But he wanted to see them immediately, and he said, if you are not going to do them, then I will do them. I said, well, you are the boss, I don't have much choice whether you are going to do that or not.

He convened the cast, told the stage manager he wanted to see them, saw the --

THE COURT: What did you mean by hold the curtain?

THE WITNESS: He kept the audience waiting in the theater while -- instead of paying for more rehearsal time he called the cast in, and usually it's a 7:30 curtain and the show started at 8:30 or nine o'clock, so he could put that in.

Q In connection with the play entitled 70 Girls 70, did that play have a tryout period out of town?

A Yes, in Philadelphia.

THE COURT: The play you just talked about was which one?

THE WITNESS: Ring-o-levio. That was a pre-Broadway.

THE COURT: Did it appear on Broadway?

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2 A Yes.

3 Q Would you tell The Court what happened.

4 A This was a case where I had been working on the
5 show with the writer.

6 Q Who was the writer?

7 A Fred Ebb and John Kander who also wrote Cabaret
8 among many other fine musicals, and certainly first class.
9 And it was a departure from the kind of work that they had
10 been doing, and that is why they came to me. They felt that
11 the work they had seen me do was specifically related to the
12 work they wanted to see.13 When the show opened in Philadelphia and got,
14 I would say what are normally out of town notices, meaning
15 that they said, good show, good music, good thing, good
16 concept, and they are going to be here for five weeks and
17 they will get it together and it should be a big hit in
18 New York.19 Fred, because this was the first time he had
20 written a libretto, he is normally a lyricist, Fred decided
21 that perhaps the critics would come down very hard on him
22 because he was trying to combine two forms. He was being
23 too experimental. He was doing a show which had the
24 freedom of, a show, for instance, like Hair, and yet he was
25 not 25 years old and not a black music writer.

1 Yet I believed very strongly that it would work.
2 Well, Fred decided, he came to me and he said, Paul, we ave
3 got to start to really add a lot of book here. We have
4 got to start to make the plots here, we have got to re-arrange
5 and pull songs.
6

7 I said, Fred, you just can't do that. A play,
8 a musical is something that has been conceived over a long
9 time and is a very clear concept. That's the way the costumes
10 are designed, that is the way the show is -- has been set
11 in terms of scene, in total concept. You can't just de-
12 cide you will do another concept without going all the way
13 back to the beginning.

14 He said, well, I am afraid we will get killed.
15 I said, but that's the name of the game, Freddie, you have
16 got to take this chance. And you very much liked that show.
17 But, Fred got, I guess as the date got on, Fred got more and
18 more nervous. We would do normal changes and worked to-
19 gether. He went to the producer, Mr. Whitelaw, and he said,
20 listen, I want Paul to put in these changes. I want to sit
21 down and I want to rewrite this book. And he says that
22 it's not right, he doesn't agree, doesn't want to do it.

23 Well, I would say that the writer and the direc-
24 tor both being under the overall control of the producer
25 are about the same level. They both have recourse to the

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producer, they can neither one overrule the other. They both have very clear rights. And so --

THE COURT: What do you mean by rights?

THE WITNESS: Rights meaning that --

THE COURT: You don't mean constitutional rights, of course.

THE WITNESS: No. I suppose I mean contractual rights. In other words, a writer has rights about his own work. He cannot just go changing his work without his agreement or without his changing it unless that's so agreed upon or he is dismissed or something else is done. But you must go to the writer, the writer is there with you every day, and say to him, I need this change, and he says, Paul, that's not working, let's rewrite it.

But in this case it was really changing the concept. So I said, Freddie, if you want to do this all over again, you are going to have to go to Arthur and you have to talk to him.

Q Arthur is the producer?

A Arthur Whitelaw, right. It's his show. So Fred did do that, and then Arthur called me into a meeting with him and he said, Paul, Freddie came to me and he said that he wants to do a lot of things to the show, and you don't think they are going to work. And I explained it to him

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2 why I didn't think they were going to work and why in fact
3 it would only make the show confusing and muddled and much
4 less effective than it was.

5 So the producer at this point I guess, had a
6 problem on his hands. He has a director and a writer who
7 are at an absolute stalemate.

8 So he said to me at the end of this meeting that,
9 Paul, he said, the only thing I, you know, want is going to
10 have to go. I will have to send Freddie back to New York
11 and get another writer because we both agreed certain work
12 needed to be done, or else you are going to have to back to
13 New York, I need somebody to continue to do the work that
14 you are doing. So I said, Arthur, I can't make that decision
15 for you. I told you what I feel.

16 Later that evening the general manager, who is
17 the producer's right hand, as it were, the man who day to
18 day handles many things for the producer, came to me in the
19 middle of that preview and said, Paul, I talked to Arthur
20 and he met with Fred and John, and they have decided that
21 your services are no longer required. So I said, all right,
22 I am sorry, but I understand. And I was given a written
23 notice and was on a train that night back to New York.

24 Q Is it your understanding that you were fired
25 because of this dispute with the author?

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1
2 A Yes.

3 Q And it was the producer who made the decision?

4 A Absolutely. There is no question about it.
5 He had to adjudicate. He had two people and he had to make
6 a choice of who was at that moment more important to him.
7 And, like all others, there are crucials and you decide what
8 are your crucials. You can do without one, it's easier to
9 replace one than it is another.

10 Q Did you direct a musical called Love Me, Love
11 My Children?

12 A Yes.

13 Q Who was the producer of that play?

14 A Joel Schenker and Ed Cooke.

15 Q Did a time come in the production of that play
16 where the producers took out a number?

17 A Yes. Mr. Cooke said to me one night, they were
18 at all the rehearsals every day, they would drop in, then
19 we started to do run-throughs so they could see the whole
20 piece together. There was a number that Mr. Cooke felt he
21 was really not at all sure about. It bothered him personally
22 a great deal. Even though the number essentially worked,
23 the cast liked it, I liked it, the writers liked it. But
24 particularly, one of the producers felt that it was dis-
25 tasteful.

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Q Did you take it out?

A Yes, ultimately in preview he came to me in a meeting after the preview, he said, Paul, put another number. I don't want to see that number again.

Q Did you indicate that you were opposed to that decision?

A Sure, I did. I said I felt it was a strong point, I felt the actors did it very well in that particular case, and I thought it was a needed break and a certain rhythm created in the second act, and he wanted very much to take it out. He said, it bothers me, I don't want to hear it again.

Q And it was taken out?

A And it was taken out. And replaced.

Q In connection with Molly, who was the star of Molly?

A Kay Ballard.

Q Did a time come in the production of that play where you had a dispute with Miss Ballard concerning the way she was to interpret her role?

A Yes.

Q Tell The Court about those circumstances.

A Well, this is a case where again, as is I suppose with 70 Girls 70, Mr. Fbb was the known commodity in this

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case, people were obviously buying tickets because it was
Kay Ballard --

Q She is a television star; is that correct?

A Television star. And we had worked, we had
been out of town, we had worked on the show for a very long
time because it was postponed once, so we had really been
on it for eight months and had a close relationship.
Except as the show opens more and more pressures grow and
pressures grow on everyone, especially the person who is
out there.

So, in the process of doing this one by one,
and I really saw that this had to come, one by one people
were dismissed. She didn't like the writer, so the writer
was let go.

Q Who is "she" now?

A Kay Ballard. Another writer had to be put in.
Then the next thing was that she felt it needed to be
reconceived and they should have a new director. So, they
had a new director. And then the week after I left she
felt that the music and lyrics needed to be redone, and so
the composer and lyricist. So the show, by the time it
opened, because the producers that really had no choice
and said exactly that to me, they said, Paul, you know if
the lady says that she wants to do it, I don't know what else

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2 we can do. We must please her. And we are sorry. But,
3 this is how it has to be. So we must make this decision
4 and --

5 Q Up until the time that you were relieved as a --

6 THE COURT: You pretty much mentioned the word
7 boss a few minutes ago. I think you were speaking of Mr.
8 Whitelaw. In this situation she was pretty much the boss?

9 THE WITNESS: Yes. It's an interesting word
10 in the book called The Season by William Goldman. He de-
11 scribes this process, and he says in every production there
12 is a muscle, he calls it the muscle. Sometimes it's the
13 star, sometimes it's the producer, sometimes it's the writers.
14 It depends.

15 THE COURT: Sometimes it's the director.

16 THE WITNESS: In the case where a director is
17 the most well known quantity.

18 Q Up until the time that you were relieved as a
19 director did you make any of the decisions to fire any of
20 those people who were fired in that production?

21 A No, I was always consulted but they were never
22 my decisions at all. As a matter of fact, I felt very
23 strongly against it because I thought what was happening was
24 a pervasive hysteria which is never healthy where every time
25 there is a problem it's, "Fire somebody."

Q So you opposed those decisions?

A Absolutely.

MR. GREGORY: Your witness.

THE COURT: The thing that you said about Mr. Whitelaw, I have forgotten now the precise context, but you said something to the effect that he was the boss so therefore certain things were done. That was, I guess, Ring-o-levio you were talking about.

THE WITNESS: No, that was 70 Girls.

THE COURT: 70 Girls?

THE WITNESS: Yes.

THE COURT: Can you tell me a little bit more precisely of what you meant when you said he was the boss? Do you mean he was the man with the muscle as Mr. Goldman says?

THE WITNESS: Yes. Obviously the producer has the right to hire and fire. He is the only one who has that right. It seems to me any man in any company, in any organization who has that right is the boss.

THE COURT: What did you do before you became a director?

THE WITNESS: I was in college. I have always been a director. I was artistic director for two years, and I started as director on my own.

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1
2 THE COURT: Do you have a secretary?

3 THE WITNESS: At times, yes.

4 THE COURT: This girl, you are the boss and
5 she works for you in terms of that relationship when you
6 have a secretary.

7 THE WITNESS: Yes. Even in a show I would say
8 that a director has a great deal of say with his actors.
9 He is virtually the boss. If he says to the actor, I want
10 you to move from center stage to right and sit down on that
11 couch, the actor will do that.

12 On the other hand, and this happened, and this
13 is the case with Mr. Dubrock, if then the producer comes
14 in --

15 THE COURT: The relationship between you and the
16 actors, is it the same sort of employment relationship?

17 THE WITNESS: No, because I don't pay them.
18 But it's a known artistic concept that an actor relates to
19 directors. It's part of his contract that he must take
20 that direction. It's part of the director's contract that
21 he must direct the actors. So it's a known commodity.

22 THE COURT: Is that description also, which is,
23 of course, a general description, is that general description
24 also pertinent and appropriate for the relationship between
25 a producer and the director? That is, the producer must

1 9 cmcq Aaron-cross

2 when rehearsing a specific scene after the props are there?

3 A It depends on the very specific producer. Some
4 are more exact in terms of their notes, and others are just
5 general. Sometimes a producer says, I think it's too slow.

6 Q In your opinion whose function is it to determine
7 whether to use props or not to use props?

8 A No question about it, it's the director's function.
9 However, case in point, I directed a play called The Burnt
10 Flowerbed in New York last year. The producer of that play
11 was a man named Gene Feist who wanted three men to come in
12 as revolutionaries carry guns. I thought it was totally
13 artistically incorrect. So he had to make the choice. Either
14 he is going to do it himself or he is going to tolerate the
15 fact that I really had very strong feelings about that.
16 There were no guns on opening night.

17 The week after opening night I went back to see
18 the show again and there were the guns put in by the producer.
19 Took the props, put them in because he wanted them in. And
20 he wanted to see them in. And he ultimately did it.

21 Q Would you say the custom, practice in the
22 industry is for the producer or the director to make that
23 determination?

24 A It is the practice for the director to make that
25 determination.

1 10 cmc

Aaron-cross/redirect

2 MR. KASSEL: No further questions, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. GREGORY:

5 Q But your testimony is that if the producer dis-
6 agrees with that determination he can overrule the --

7 A Oh, yes, it can be --

8 MR. KASSEL: I object, your Honor. That is not
9 the testimony.

10 MR. GREGORY: I am not asking --

11 MR. KASSEL: Then I must have misunderstood the
12 question.

13 Q I am asking, is that the case if the producer
14 disagrees with the director does he have the authority or
15 the power to overrule the director?

16 A He certainly does, and it's been done. I have
17 seen dresses on the stage that I didn't put there. I have
18 had a producer take the designer in a car, go to a store,
19 buy a dress and bring it back and put it on the lady in the
20 play. A dress that I have never seen. And I see it for the
21 first time on the stage in the preview. And I say, my God!
22 Where did that red dress come from? And the designer says,
23 Paul, I'm sorry, what do you want me to do? Because she
24 is getting paid by the same man I am.

25 MR. GREGORY: No further questions.

1 12 cmcg Schneider-direct

2 A L A N S C H N E I D E R, called as a witness on
3 behalf of the defendant being first duly sworn,
4 by the clerk of the court, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GREGORY:

7 Q Mr. Schneider, what is your occupation?

8 A I'm a theater director and teacher.

9 Q Have you directed plays on Broadway?

10 A Yes, I have.

11 Q How long have you been a director?

12 A I have been a director for more than 30 years.
13 22 of them on Broadway.

14 Q How many on Broadway?

15 A 22. 1953 was the first time.

16 Q How many plays have you directed altogether?

17 A I have to think. About 250. On Broadway, 26 or 7.

18 Q Have you directed on Broadway several plays by
19 Edward Albee?

20 A Yes, I have.

21 Q Could you tell us the names please?

22 A Who's Afraid of Virginia Woolf, A Delicate
23 Balance, The Ballot of The Sad Cafe, Malcolm, On Broadway,
24 several off Broadway.

25 Q And have you directed plays by Harold Pinter?

1 13 cmc

Schneider-direct

2 A Yes, I have.

3 Q Would you name those plays?

4 A The only one on Broadway was The Birthday Party.
5 Several off Broadway.

6 Q Have you directed a play with Samuel Becket?

7 A I directed all of the plays of Samuel Becket.
8 Only one of them was intended for Broadway, that was
9 Waiting for Godot. The rest were off Broadway.10 THE COURT: This suggests to me that an author
11 can go to a producer and say, I want Mr. Schneider as my
12 director?

13 THE WITNESS: That happens.

14 THE COURT: Has that happened in your case with
15 these three writers, or was it the producer's decision be-
16 cause of some other reason?17 THE WITNESS: One thing led to another, your
18 Honor. In the case of Mr. Becket that was a producer's
19 decision, because Mr. Albee became aware of my work with Mr.
20 Becket, he asked me to direct his plays until he got the
21 director.22 THE COURT: Did that mean that with respect to
23 Mr. Albee particularly I think you said you had four of his
24 plays on Broadway, did he in effect go with you to the produc-
25 and say -- well, what happened?

1 14 cmcg

Schneider-direct

2 THE WITNESS: He in effect went with me to the
3 producer and said, I want Alan. And actually he had been
4 increasingly becoming co-producer of his own plays. In
5 other words, he has produced with another producer.

6 BY MR. GREGORY:

7 Q Will you give us the names of the other plays
8 that you have directed on Broadway?

9 A All of them?

10 Q Well, the more important ones, if you will.

11 A I directed The Remarkable Mr. Pennypacker. And
12 Anastasia. Miss Lonely Hearts. I directed You Know I Can't
13 Hear You When The Water is Running.

14 THE COURT: Well, isn't that enough, Mr. Gregory?

15 MR. GREGORY: We will be talking about the other
16 one later anyway.

17 THE COURT: All right. If you are just qualifying
18 him I am satisfied.

19 Q Did you say you are also a teacher?

20 A That's correct.

21 Q What do you teach?

22 A I am professor of theater arts at Boston
23 University, and I have taught at other schools in the past.

24 Q What other schools have you taught at?

25 A Catholic University of America, City College of

1 15 cmcg

Schneider-direct

2 New York, Stamford, et cetera.

3 Q Did you direct a play entitled Tiny Alice?

4 A I left that one out. I beg your pardon, your
5 Honor. Yes, I did on Broadway. Edward Albee's Tiny Alice.

6 Q Did something happen during the course of that
7 play involving the leading lady's dress?

8 A Well, if I may speak in principal what happened,
9 on that play was representative of what has happened on all
10 of these plays of Mr. Albees, or of the others that at some
11 point or other the producer did something that I had nothing
12 to do with.

13 In the case of Tiny Alice he decided that the
14 dress that was worn by Irene Worth was not making her look
15 good enough, and he went out and got another designer and
16 designed the dress and then told me about it afterwards.

17 The set for that was designed, I would say, by
18 a combination of the producer and the author. That's a
19 tendency in that particular organization that the author --
20 tendency in our organization is to give a great deal of
21 control to the producer insofar as the designing of the set,
22 the costumes, the lighting, the props are concerned.

23 In the case of Tiny Alice it was a costume, in
24 the case of Virginia Woolf it was a case of the setting.
25 In the case of Malcolm it was the lighting and the props, and

1 16 cmcg

Schneider-direct

2 so on.

3 Q Go back to Virginia Woolf for a minute. What
4 happened in the --

5 A In the case of Virginia Woolf the designer and
6 I worked up a setting and I went off to California to work
7 that summer and I received a sketch of the setting in the
8 mail because I was going to work on the production. It was
9 completely different from what I had worked on with the
10 designer, and when I rang him up to find out what had happened
11 he said, that is what they want. "They" is the producers.
12 And I accepted that.

13 Q Was it the set that you wanted?

14 A It wasn't the set that I had wanted. I adjusted
15 to it. It was either that or not directing the play.

46 16 Q You say that in Malcolm you had a dispute with
17 the producer on the setting?

18 A The same basic element that the set was designed
19 largely to suit the producer's taste. The costumes, including
20 the costume designer, similarly. The lighting, similarly.
21 And I had to either adjust or not do the show.

22 Q What typically happened, Mr. Schneider?
23 Was there a discussion about these changes or --

24 A The implication, the premise was that that was
25 the condition under which the shows were being done. That

1 17 cmc

Schneider-direct

2 the producer was the man in control. I mean, I had had
3 other producers --

4 THE COURT: Why was he in control? Was it a
5 matter of contract?

6 THE WITNESS: You can't legislate everything in
7 the theater contractually. It's a matter of personality.
8 It's a matter of push. It's a matter of personal relation-
9 ships.

10 Basically if you have a strong producer --

11 THE COURT: Perhaps if you had a strong director
12 he might be the man in control.

13 THE WITNESS: That's right.

14 THE COURT: Or if you have a strong star.

15 THE WITNESS: That's quite true. It's always
16 true. The muscle.

17 THE COURT: Mr. Aaron told us about the muscle.

18 THE WITNESS: Yes. I am considered a strong
19 director, that's the whole sad story, and in spite of that
20 fact I have never directed a show where I was in complete
21 control.

22 THE COURT: Well, isn't that at least in some part
23 perhaps in large part, the function of the fact that you don't
24 put up the money?

25 THE WITNESS: That's correct. But that's not my

18 cmcg

Schneider-direct

job. In other words, artistically I am supposed to be in control and he is supposed to, the producer, is supposed to put up the money. That's the division of responsibility in theory. In practice responsibility or authority inter-relates much more personally than that.

THE COURT: But isn't it inevitably always an end, the man who puts up the money is what makes it go? I mean, who not makes it a hit or a flop, but if you don't have the money you can't get off the ground?

THE WITNESS: The money, however, doesn't do the show. It just creates the circumstances under which I can function, or the rest of us.

THE COURT: That's the point. But if the man who is putting up the money for whatever reasons, good or bad, decides that he doesn't think things are right and is about to take his money out --

THE WITNESS: Or feels that he has to make certain decisions, that's correct.

THE COURT: Yes.

BY MR. GREGORY:

Q Are you testifying, Mr. Schneider, that you are controlled at times because of the money, because of the budget?

A I am always controlled because of the budget.

1 19 cmcg

Schneider-direct

2 Q Can you give us specific examples of where the
3 money or the budgets of the production controlled you in your
4 direction?

5 A I will give you a very specific example, some-
6 thing that I learned very early. When one is directing a
7 production out of town, that is before you go to Broadway,
8 you usually go to Boston or Philadelphia, if a show has more
9 than one setting you are playing in Boston and you have three
10 sets, you play the previews at night. The show is left with
11 the third act set on stage. The next day if I want to re-
12 hearse the first act for some reason I cannot because the
13 third act is on stage. In order to remove it at the end of
14 the last night's performance that requires a crew of call
15 and may involve several hundred dollars, or it may involve
16 less than that.

17 But the decision is made by the producer not to
18 spend the money. I can't rehearse the first act unless I
19 do in the men's john somewhere. So I have learned not to
20 direct three set shows out of town, because I never can get
21 to direct the first act. Now, that's a simple budgetary
22 thing.

23 But it is true that very often we rehearse in
24 those particular quarters because they are the only ones
25 available. But we never get to rehearse the first act in

20 cmcg

Schneider-direct

1 the third, we rehearse the third act in the set. Usually
2 the problem is someone says, your problem with the third
3 act is in the first act. You never get to direct the first
4 act. I mean, obviously in the case of a show in New York
5 I couldn't rehearse getting toy soldiers through an archway.
6 They were built, I remember the show was called Blood Red
7 Roses, and we had, it was sort of a musical version of the
8 Crimean War and we had archways, several archways, and we
9 had little toy soldiers to simulate the various battles of
10 the Crimean War and then when they were designed by somebody,
11 they designed them exactly so they fit. But they fit within
12 a millimeter. So I could never get the soldiers through the
13 archway, but I wasn't allowed to rehearse that ever because
14 it cost money.

16 So every night the toy soldiers didn't get through
17 the arch. Nor would they then rebuild the toy soldiers.

18 'THE COURT: Well, you know, I'm sure you know,
19 Mr. Schneider, one of the problems here, and key problem,
20 is the relationship from a -- "employment" is the wrong word,
21 but the only other word I can think of is direction, which
22 isn't the right word for obvious reasons, between a producer
23 and a director. I think you were here when Mr. Aaron was
24 on the witness stand and I use the example of the director
25 and the secretary. I have used in past days a couple of

21 cmc

Schneider-direct

1 other examples. I don't suppose for one moment that those are
2 the best examples, but at least perhaps to try to help all
3 of us understand how the facts apply to the law, which is
4 our job and not yours, I have used an example, for example,
5 of a fellow who was presently painting my house. If I don't
6 like the way he is painting the house and if I don't like the
7 paint he is using I can tell him right now, stop, and it
8 seems to me this is somewhat like the relationship between
9 a producer and a director.
10

11 Yet my ability to exercise direction over him is
12 quite limited. He has his skills, I have mine. And thank
13 God I don't know how to paint a house. But I can get out
14 there and stand and look over his shoulder and tell him that
15 I think, gee, that's right, and this color is wrong, and he
16 can turn around and say to me, look, Judge Stewart, if you
17 don't like what I am doing, I quit. And he quits. And I can
18 say to him the same thing, that I don't like what he's doing
19 and I stop paying him.
20

21 But it seems to me that what you are telling me
22 so far doesn't really get to the crucial question of what
23 is the relationship. Is it something other than the easy,
24 I hope it is an easy example on the one hand, easy example of
25 a secretary who I think probably does what her boss tells her
to do and does it as well as she can, and that's it, and, on

22 cmc

Schneider-direct

the other hand, a house painter who has more work to do than he can handle, if he doesn't like the coffee I serve him in the morning he will get up and leave, he is completely independent of me. He doesn't need my money. He can get my money from some other person. Because he has got a long list of people.

So there is a totally different relationship between my secretary and my house painter. I don't know what label to put on it and I don't know what words are used to describe it. I get the impression that the relationship between, after several days of testimony, between a producer and a director is, well, obviously doesn't match either, but it is somewhere in between. And I keep hearing that the producer has the money and therefore he can fire, as though this were an asset. I don't think it is. Is it to you?

THE WITNESS: May I respond?

THE COURT: Yes, that is what I am asking for.

THE WITNESS: No analogy can be exact, as you say.

THE COURT: No, of course not.

THE WITNESS: I was thinking of an interior decorator more than a house painter, because there is an element of esthetic judgment involved.

THE COURT: That is not a good example to use.

23 cmc

Schneider-direct

My wife is an interior decorator.

THE WITNESS: But the real difference to me, your Honor, is that there are an infinite number of houses that in the normal course of human events need painting, and that house painter knows that. I rarely create my own opportunities for employment, unless I become a producer. I am employed by somebody. A play exists, a producer buys the right to that play, he then employs me to go back to your analogy of the painter, he can say if he don't like your coffee I will go, but I don't go to somewhere else. There isn't anywhere else, unless it's another producer who is the same thing.

If I say to him, I'll quit, my opportunities for further employment are affected by the fact that I quit or he fired me. In the case of the house painter they are not. If I am fired by two producers in a row I will never get a job in the theater again. Even if I get paid for that particular job contractually.

THE COURT: Well, why is that?

THE WITNESS: Because the onus will be on me. I will be suspect. My status, my image, my reputation, the way people look at my ability to deliver, there is no such thing as a sure thing in the theater. People are always looking for someone who has just had a success.

24 cmc

Schneider-direct

THE COURT: I would suggest that the difference is a little more than that. The house painter gets fired twice --

THE WITNESS: Nobody knows about it.

THE COURT: Well, they do know about it. I will tell my friends and neighbors when they come to me and say what about Joe Doe, was he a good house painter, and I will say whatever I think I am going to say. But after all I think this is the difference, painting a house doesn't require a great deal of professional, and certainly not much artistic ability, talents which are not easy to come by, whereas in the theater you are dealing with these highly skilled, highly professional, highly artistic needs, and how they are developed is something we don't need to consider.

Either you are born with them or you develop them. But, anyway, you have them. And that is a little different. At least factually from house painter's situation. How about a lawyer and a client?

THE WITNESS: Dangerous to deal in analogies too closely.

THE COURT: Yes, I know, but it is one way of trying to grapple with what I find very difficult problem, and that is trying to find out the relationship and what it means. Because you know there is a legal issue here which

1 25 cmcg Schneider-direct

2 turns on this relationship.

3 Yes, go ahead.

4 THE WITNESS: I think the relationship between
5 a director and an actor on the one hand is to some extent ana-
6 logous to a relationship between a producer and a director.
7 An actor is employed by me, a hired actor. I am not hiring
8 his body and soul, but I am hiring his ability to function.

9 THE COURT: He talent.

10 THE WITNESS: His talent. He will surprise me.
11 He will go beyond me. He will not do everything I want, but
12 ultimately if he doesn't do what I fundamentally demand of
13 him, I have to do something about it.

14 THE COURT: You are hiring a piece of merchandise.

15 THE WITNESS: I have to either make him to that
16 or I have to remove him and bring someone else in to do that.
17 I think there is a --

18 THE COURT: And if he is not capable of color
19 TV but only black and white TV, no, seriously --

20 THE WITNESS: Perhaps. Or if he is not capable
21 of a performance in a certain style play or a performance in
22 a certain role. It's not exact, but there is something there.
23 I think that again the difference with the house painter is
24 the theater's not only professional and esthetic, but there
25 is an intangible indefinable thing. Nobody really knows who

26 cmcq

Schneider-direct

is good or who is bad. Somebody may decide, I'm a good director, somebody may decide I'm a bad director. Some producer may never hire me. Some actors don't want to work with me, and vice versa. Two and two is never four in the theater.

So that the relationship between a director and a producer is always a personal matter. But the producer is always in control of me one way or the other.

THE COURT: Of course. He has got the money.

THE WITNESS: I'm not sure I'm answering your question, but I am trying.

THE COURT: Yes, you are very much so. Yes, it does seem to me the relationship between a producer and a director has got some special elements in it. Obviously different from the two examples I have talked about. I can think of other examples, but as you say analogies never get you very far, except I guess ultimately to confuse you.

But I am interested in what you say. What you have just said about the relationship, it seems to me that puts, in the light of my limited learning, that puts it pretty well.

Yes, Mr. Gregory.

BY MR. GREGORY:

O Did you direct a play on Broadway called Moon

1 27 cmc

Schneider-direct

2 Children?

3 A Yes, I did.

4 Q Who was the producer of that play?

5 A David Merrick.

6 Q Were there changes made in the script of that
7 play?8 A At a point in the previews of that production
9 Mr. Merrick came to me at the back of the theater and said
10 several times, tell that kid to get those words out of there
11 or I'm not going to do the show.12 Q Now could we back up just a minute, Mr. Schneider?
13 This was a preview, you say?

14 A Preview of Moon Children on Broadway.

15 Q What about in the rehearsal stage before the
16 previews, was Mr. Merrick present in the theater.17 A Mr. Merrick was present at several rehearsals.
18 He was present at some of the production conferences and
19 casting conferences. Mr. Merrick at one point changed the
20 physical design of the setting without asking me or telling
21 me or simply confronting both the designer and myself with
22 the change. He didn't like the design that we had agreed
23 upon, and he made the designer changes.

24 Q Then you got up to previews where he said --

25 A He said, tell that kid, the kid was Michael

1 28 cmc

Schneider-direct

2 Weller, the author, to get those words out of there or I'm
3 not going to do the play. The play was about a commune of
4 young people about to graduate from a university.

5 THE COURT: Yes, I know.

6 A And there was some language in there, but the
7 thing is Mr. Merrick had seen the production, we did it
8 originally at the Arena Stage in Washington. He had bought
9 that play with those lines. He had said nothing about it,
10 then at that time he simply confronted me with that and I
11 wound being a kind of intermediary trying to calm down Mr.
12 Merrick and trying to calm down Mr. Weller.

13 But basically we eventually had to get those
14 words out of there.

15 Q What alternative would you have had, Mr.
16 Schneider, if you didn't do what Mr. Merrick wanted?

17 A I had to take the risk and responsibility that
18 he would indeed not do the show. And the author and I
19 thought about it a great deal.

20 Q Have you run into that circumstance before or
21 since where you were afraid the producer would not continue
22 with the show?

23 A Constantly. It's always present. I mean, one
24 lives with that particular Damocles Sword hanging over you.
25 I mean, some producers are more subtle about that, some

1 29 cmc

Schneider-direct

2 producers are less subtle. Mr. Merrick among them. But they
3 are always there.

4 THE COURT: He is among the --

5 THE WITNESS: Less subtle. In terms of the
6 implicit threat.

7 THE COURT: The Damocles Sword, Mr. Schneider,
8 is something that hangs over the head of anybody who is
9 getting paid by somebody else.

10 THE WITNESS: The degree of subtly within which
11 one can operate, I mean, that's true for example if I hire
12 an actor I can fire him, but I do everything I can to re-
13 assure him always, constantly, that that is not so. That
14 is if I simply say, you do that or else, he will never
15 function.

16 THE COURT: I thought you told me a few minutes
17 ago that you can't fire the actors, that you have to go to
18 the producer.

19 THE WITNESS: I do, but I mean I can go and say,
20 I want to fire somebody, and eventually sometimes the producer
21 will agree.

22 BY MR. GREGORY:

23 Q You said hire the actor. Does the director hire
24 the actor actually?

25 A I help to choose the actors. I mean, I have to

30 cmc7

Schneider-direct

1 agree to the actors, the author has to agree to the actors,
2 and normally the producer has to agree. It's a three-
3 cornered partnership. The actual contract is signed by the
4 producer. The act of firing is given by the producer.
5

6 THE COURT: Now here is a ridiculous example:
7 Suppose it happens that Chase Manhattan Bank decides to
8 produce a play and they decide that they don't want to get
9 involved in the production at all. All they want to do is
10 put up the money. And I picked the Chase Manhattan Bank
11 because they have more than a few dollars. So I guess they
12 have got to hire a director and they hire a director and
13 they tell the director, here, look, from here on it's your
14 baby, period. We are going to have nothing to do with this.
15 When you need money up to ten million dollars, call on us,
16 and it's right there.

17 I am taking an extreme example. And from there
18 on the director is in complete charge. Would that be a good
19 thing?

20 THE WITNESS: Your Honor, I hope you won't --

21 THE COURT: I am not being facetious. I am
22 trying to find what the role of producer is other than to
23 put up the money. Would you like to have this kind of a
24 situation?

25 THE WITNESS: I would like to have a producer

31 cmcg

Schneider-direct

1 who is there when I need him and stays away when I don't want
2 him. Even in the case of the Chase Manhattan Bank there is
3 going to be somebody who will sign the contract or decide
4 to spend the ten million dollars unless he gives that to me,
5 in which case I would become the producer. I mean, the
6 Chase Manhattan Bank has to be represented. I would become
7 the producer in effect.
8

9 THE COURT: Yes.

48 10 THE WITNESS: And indeed all of us in the
11 theater seeks to become producers. If not in name, in
12 actuality, but because only then can we be in control.
13 I mean, the words artistic control which are in my contract,
14 because I insist on them more than I do on the amount of
15 money that I make, are meaningless. They are really meaning-
16 less unless I can rule the producer on every issue, which I
17 rarely do. I win some issues and I lose some issues, but
18 in effect I would then be the producer. That's the only
19 way I can answer that.

20 THE COURT: Well, my example was a bad one
21 except that it helped me --

22 THE WITNESS: I would like a producer to be there,
23 but not to make the decisions that I should be making.

24 BY MR. GREGORY:

25 Q Who was the producer of Waiting for Godot?

1 32 cmcg Schneider-direct

2 A Michael Meyerberg.

3 Q Did you have the problem with the set on that
4 play also?

5 A Michael Meyerberg hired me to direct waiting for
6 Godot with two of the actors, the leading actors set, Bert
7 Lahr, and Tom Ewell.

8 Q They had been hired before you?

9 A He hired me at the time the two actors were al-
10 ready set for the roles. And I agreed to those two actors.
11 He then sent me to Europe to talk to the author. While in
12 Europe he redesigned the set and hired the other two actors
13 without saying anything to me. In fact, I was confronted
14 with that when I arrived back.

15 I was stunned, shocked, appalled. Begged him
16 not to. He said, those are the actors. And we had no time
17 because the theater had been hired and we had to go into
18 rehearsal immediately.

19 So that the setting was designed by him and the
20 two actors for the -- there are only four roles -- were
21 hired by him.

22 Q One of these actors they hired was a dancer;
23 is that correct?

24 A That's right. Charles Weidman for the part of
25 Lucky.

1 33 cmcg

Schneider-direct

2 Q Did that present any particular problem?

3 A The part of Lucky requires as its climax -- I
4 don't know if you are familiar with that play, your Honor --

5 THE COURT: Yes.

6 A A, how shall I put it? Highly complex harangue
7 vocalized in a very specific technical manner by someone
8 capable of dealing with the language.9 THE COURT: It can be absolutely deadly unless
10 it is done well.11 THE WITNESS: The part was given by Mr. Meyerberg
12 to Charles Weidman, I think he is dead, who was an extremely
13 talented dancer who had never spoken a line on stage. When
14 I mentioned this to the producer he said, never mind, he'll
15 surprise you. The trouble was that I could never rehearse
16 Mr. Weidman.

17 Q Why?

18 A At the instructions of Mr. Meyerberg. Because
19 Mr. Weidman was so nervous. I was prevented from rehearsing
20 him. He was learning the speech, he wasn't ready yet. He
21 was going to do it. If only his confidence could be built
22 up. And I never got to rehearse Mr. Weidman. He never ever
23 did the speech.24 Finally three days before we opened he got through
25 the first two lines and then ran off stage and we had to put

1 34 cmcg Schneider-direct

2 the understudy on. But it was an example of where the producer
3 felt that somehow this dancer would surprise everybody by
4 his ability to deal with the speech and where I never had
5 any control over an actor's ability to do the part funda-
6 mentally.

7 Q Are you saying that Mr. Meyerberg prevented you
8 from rehearsing this actor?

9 A That's correct.

10 Q How did he prevent you from rehearsing him?

11 A He told me Mr. Weidman was not ready, he was
12 studying, that he would be fine and that I should go and
13 direct Bert Lahr, which indeed I did. But I would stay away
14 from Mr. Weidman until Mr. Weidman was ready. Now, three
15 days before we opened, he still wasn't ready.

16 I finally brought him on stage and made him
17 speak. But Mr. Meyerberg simply refused to allow me to come
18 together with that actor. That's not typical example, your
19 Honor. I mean, you must understand it's an extreme example,
20 but it is illustrative of the possibility, or the conditions
21 under which we work. I mean, that has never happened to me
22 with a different producer -- yet.

23 Q Did you produce the play called Long Way From
24 Home?

25 A Direct. I directed the play.

1 35 cmcg Schneider-direct

2 Q Excuse me, yes.

3 A My first play in New York was an Americanized
4 version of The Lower Depths. It was called the Long Way From
5 Home.

6 Q Who produced that play?

7 A A gentleman named Nat Carson.

8 Q What happened on opening day?

9 A Nat Carson always wanted to direct that play,
10 and he was only prevented from doing so because the author
11 refused to allow that to happen. Nat Carson always wanted
12 to direct that play, and he was only prevented from doing so
13 because the author refused to allow that to happen. Nat
14 Carson had, I believe, he was a scene designer, he had never
15 directed a play, or maybe once or twice, but he wanted to
16 direct that play. But the author would not agree.

17 Subsequently he hired me to direct the play.
18 He rarely came to rehearsals except when we had a runthrough,
19 at which point that happened at the end of the second week
20 and at the end of the third week, and each time he came he
21 said, it's awful and I'm taking over. But the author went to
22 the dramatist guild each time and said, you can't do that.

23 So, eventually I went on as director. Opening
24 night, it was on a Sunday, he called me, Mr. Carson called
25 me at 3 a. m., and I remember it specifically because I had

Schneider-direct

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37 cmcg

Schneider-direct

Q Did you have a particular problem with him in connection with lighting the stage?

A Excuse me for prefacing this, your Honor. Some of my best friends are producers. I mean, it isn't that I'm hostile or antagonistic. Richard Barr is a very good friend of mine, so if I say something that's against him -- Richard Barr doesn't believe in what we call internal light cues.

Q What does that mean?

A That means he doesn't believe that within a scene you should change the lighting. If you change the lighting it should be organically related to turning on the lamp, or if the sun is sinking or it gets to be dark. So that all light cues should be organically related to some physical action.

I happen to believe that lighting is one of the most expressive ways of creating mood, atmosphere, change of reality, and so on. And most directors like to vary light cues where the audience isn't even aware it's getting darker or lighter.

Any time I directed anything for Richard Barr he starts off by saying, no internal light cues. That's the condition under which one operates in his productions. So I have very often in the case of certain production, I have had to simply eliminate, I have put them in and then

1 38 cmcg Schneider-direct

2 eliminated them.

3 THE COURT: Well, that is something you know
4 about at the outset.

5 THE WITNESS: That's correct.

6 THE COURT: You take the job with that in mind.

7 THE WITNESS: Absolutely.

8 Q But it does change the way in which you direct
9 the play?

10 A That's right. And also one hopes that one can
11 persuade Richard Barr in the course of the rehearsals and
12 indeed sometimes one can. But on the whole one has to deal
13 with that as a kind of restraint on one's own taste or judg-
14 ment.

49 15 Q Did you direct the Broadway play called I Never
16 Sang For My Father?

17 A Yes, I did.

18 Q Did you have a problem there with the set
19 design?

20 A Well, kind of a problem there was a very simple
21 one. The design was done by the producer and the scene
22 designer, a very eminent gentleman, without any consultation
23 on my part with the designer because the designer was very
24 busy, the producer wanted him because that particular name
25 would give cache to the production. They were having

39 cmc

Schneider-direct

1 difficulty in getting money. The name of the designer would
2 help to get money.
3

4 I was confronted with the design. I said, it's
5 impossible. It's wrong. It looks like an Egyptian temple.
6 It will kill us. It's gloomy. I can't move the actors
7 around, and whatever else I thought of at the moment.
8

9 The producer said, but that's it. That's what
10 I want, and that's what we are going to have, and I haven't
11 got money to redo it anyhow. But he hadn't consulted me on
12 doing it in the first place.

13 Now, that was a situation where I didn't know that
14 was going to happen with the particular producer.

15 Q Did you direct a Broadway play called All Summer
16 Long?

17 A Yes, I did.

18 Q Again, did you have a problem with the set
19 design?

20 A The same problem with the same designer, different
21 producer. The pay right's company simply wanted that pro-
22 ducer, that designer, and he designed the set without any
23 consultation. When I came from my first meeting with the
24 designer the set was designed. I said, I can't move the
25 actors around on it. They said, that's what we have. That
was early in my career and I accepted it.

42 cmcg

Schneider-direct

1 producer and the director is a very special relationship
2 which if it doesn't work means that unless the play is
3 tremendous all by itself and can't be ruined, it's going to
4 not get off the ground. And I suppose the producer and
5 director of Hamlet, if it were for the first time appearing
6 tomorrow and if the producer and director didn't coordinate
7 and didn't finally agree, it would never get off the ground.

8 THE WITNESS: I think that's true.

9 THE COURT: Well, that is what I am trying to say.
10 You can have the most beautifully written piece of poetry in
11 the world like Hamlet, and it still has got to be presented
12 and it takes a team to do it. The team will ultimately
13 respect each other and come to conclusions.

14 Now, am I making sense, or is this --

15 THE WITNESS: Yes. Yes. And the problem is
16 that the word team can mean so many different things in a
17 sense --

18 THE COURT: That's the trouble with words.

19 THE WITNESS: (Continuing) That what we are
20 talking about is that the producer treats me as though I
21 were a hired hand rather than as a member of the team.

22 THE COURT: And this is always the case.

23 THE WITNESS: It's been my experience that it is
24 generally the case.
25

43 cmc

Schneider-direct

THE COURT: Who does he treat as members of the team.

THE WITNESS: I don't know. He is the boss. He is the head man. He's in control. It's my show.

BY MR. GREGORY:

Q Did you direct a play called In Game?

A Yes, I did. It was not on Broadway, but it was by Samuel Becket.

Q Was it intended to go on Broadway?

A No, it was not. It was off Broadway.

Q Then I won't ask you any questions about that. What about LaStrada, was that a play that you directed?

A Yes, I did a musical version of LaStrada.

Q Did you have a problem there in connection with stage business?

A LaStrada was a very lyrical, poetic attempt to recapture the Fellini film. Whether it could have been done or not I don't know. As the production proceeded and the reviews were not favorable the producer and everybody lost heart and proceeded to try to jazz it up. A process which I fought tooth and nail.

At one point, however, I came to rehearsal to work on the scene and discovered that the producer had,

44 cmc

Schneider-direct

1 unbeknownst to me, hired somebody to deal with "stage move-
2 ment." He brought in another, I guess she was a choreo-
3 grapher, but we had a choreographer, Alvin Ailey and myself.
4 He brought her in to jazz up the stage movement.
5

6 So I simply discovered that a lot of my movement,
7 pantomime business, was being made more vaudeville show
8 business jazzed up, and I resisted, resented, wanted to
9 quit.

10 The producer dissuaded me finally on the grounds
11 that if it didn't work they would take it out. And eventually
12 I got some of it out and I didn't get some of it out. But
13 in other words I was simply brought in with somebody to do
14 my work, but I wasn't fired. That is, he didn't fire me,
15 he brought somebody in to simply jazz up some of the stage
16 movement, parts of the choreography and my movement.

17 Q I believe you already testified that you directed
18 a play called Anastasia; is that correct?

19 A Yes.

20 Q Did a time come in the production of that play
21 where the producer gave some instructions to the actors?

22 A Well, everybody likes to talk to the actors.
23 Always. The playwright likes to talk to the actors. The
24 producer likes to talk to the actors. And the director
25 usually tries to keep everybody from talking to the actors

45 cmc7

Schneider-direct

1 because it confuses the actors.

2
3 In the case of Anastasia the producer was so
4 concerned about certain things which he had asked me to change
5 and which I refused to change that she then went behind my
6 back and talked to the actors. That's not untypical.

7 Q Were the changes made?

8 A I talked to the actors after that. It just
9 confused the actors. It just made it harder to deal with
10 the problem. I can't honestly tell you --

11 THE COURT: Are you saying that the producer who
12 has got his money on the line should not talk to the actors?

13 THE WITNESS: Yes, your Honor. I'm saying that
14 the producer has every right and responsibility to tell me
15 exactly what's wrong. And, indeed, even to demand that
16 certain changes be made. But then let me deal with it,
17 because otherwise they won't get the changes, they won't
18 satisfy what they want. They will confuse the actors and
19 they will simply supersede the director.

50 20 THE COURT: You mean what you would like to have
21 is the normal pattern.

22 THE WITNESS: Yes. It's what everyone says should
23 happen but doesn't happen. I had to go back and push the
24 actors back to where they were before that happened, because
25 I felt it was disastrous to the show otherwise.

1 46 cmcg

Schneider-direct

2 THE COURT: Mr. Gregory, if you can tell me a
3 good time to quit for lunch --

4 MR. GREGORY: Mr. Schneider has a commitment,
5 your Honor. I would appreciate it if we could finish with
6 him before we adjourn if it would be at all possible. I
7 only have about five more minutes of direct.

8 THE COURT: I don't know what cross-examination
9 is going to --

10 MR. KASSEL: My cross-examination won't be long,
11 your Honor. Probably no more than five minutes.

12 THE COURT: All right, that's fine with me.
13 All right, Mr. Gregory.

14 BY MR. GREGORY:

15 Q Mr. Schneider, did you direct a play called
16 A Way Of Life?

17 A I started to and I was fired in the middle of
18 rehearsals.

19 Q Why were you fired?

20 A Because the producers decided that what I was
21 asking one of the stars to do was detrimental to his effective-
22 ness. Especially since he felt so. And that I wasn't putting
23 him in stage center enough and the theater parties were sold
24 on the basis of the star's appeal and not mine. So, I was
25 removed.

1 47 cmc

Schneider-direct

2 Q Because you refused to put her more --

3 A Him. It was a male star. I thought that if the
4 script required him to take something out of a closet he
5 had to somehow be in the closet while he was taking the stuff
6 out. Whereas he felt that he had to be stage center at that
7 time.

8 Q Was that an artistic decision, Mr. Schneider?

9 A As to where he was at that moment in the script,
10 yes, I believe so. Should have been.

11 Q You said you were fired. Were you paid?

12 A I was not paid until I threatened to go into
13 litigation. I had to make that particular move.

14 Q Ultimately you were paid?

15 A I was ultimately paid. Not royalties, but the
16 fee.

17 Q Mr. Schneider, when a director is discharged or
18 fired by a producer from a play before it opens, what does
19 the director lose if anything? We know he's paid. Does he
20 lose anything by being discharged?

21 A Your Honor, if you will excuse my referring to the
22 same playwright you referred to, he who steals my purse steals
23 trash, but he who takes from me my good name takes what which
24 does him no good -- I'm losing the actual quote -- which does
25 him no good, but does me irredeemable damage. I'm paid

1 48cmcg

Schneider-direct

2 because the contract requires me to be paid. If the contract
3 did not require that every producer would fire every director
4 the day before the opening of a play and that would be the
5 end of it.

6 THE COURT: Why?

7 THE WITNESS: Because then he would not have to
8 pay anybody. He would have the benefit of the director's
9 work, and then two hours before you open you fire the director
10 for reasons that can always be found.

11 THE COURT: Well, maybe he needs the directors
12 help thereafter.

13 THE WITNESS: Two hours before he opens? I
14 think it can be done. You are finished. I mean, I am
15 exaggerating the two hours, but I mean he can be fired when
16 no longer there is a possibility of changing the work.

17 THE COURT: He has the contract.

18 THE WITNESS: That's why I'm saying the contract
19 was made that you had to be paid for your work. Now, when
20 I'm fired, I said this earlier I believe, my reputation
21 suffers. My standing suffers. My status suffers. The impres-
22 sion that the profession has of me suffers.

23 I can't get a job, or I can get less jobs, or I
24 can get only a certain kind of job. There is something wrong
25 when I am fired, even if I get paid.

1 51 cmcg

2 gather they do in this field. There is something called
3 the League and there is something called the Society.
4 And I guess the law is not supposed to deal with the ideal
5 world, but with the world that we have got.

6 Q Judge Stewart just mentioned someone being fired
7 from making a mistake. Is that a criterion that is used in
8 the theater world? Do people get fired, do directors get
9 fired because there is some criterion in existence that says,
10 he did wrong, he made a mistake?

11 A There is in my opinion, and I believe in most
12 peoples' opinion, no objective criterion possible in the
13 theater. It's simply one man's judgment over another.
14 No two people will agree on anything. No two people will
15 even know whether something is going to succeed or not.
16 I don't quite understand the reason for your question, but
17 I --

18 Q The reason for my question is this: Is the
19 reason that you just gave, is that the reason why a director
20 is paid even though he is fired?

21 MR. KASSEL: Objection, your Honor.

22 Q Is that your understanding, Mr. Schneider?

23 THE COURT: No, I think we have gone far enough
24 along this line, Mr. Gregory. I will sustain the objection.

25 MR. GREGORY: I have no other questions, your

1 52 cmcg Schneider -cross

2 Honor.

3 CROSS-EXAMINATION

4 BY MR. KASSEL:

5 Q Mr. Schneider, you will agree, will you not,
6 that there are certain things that are obligations of a
7 director in the industry, for example, he is obligated to
8 show up for rehearsals; is that not so?

9 A Yes. I only question your use of the word
10 industry, sir.

11 Q In the profession.

12 A In the profession. Thank you.

13 Q In the profession.

14 A Yes, indeed.

15 Q And if a director does not show up for rehearsals
16 except for illness or something like that, he is violating
17 an obligation, is he not?

18 A I would assume so.

19 Q If a director refuses to accept a producers
20 instructions as to which actor to rehearse is he violating
21 his obligation?

22 A I don't believe that there is anything in the
23 contract that I signed with the producer that requires him
24 to tell me which actor to rehearse.

25 A I'm asking concerning the practice in the pro-

1 53 cmcg

Schneider-cross

2 fession. You gave several instances where a producer in one
3 case went behind your back to say something to an actor.
4 Let me refer to that again. If a producer tells you to
5 rehearse actor A and not to rehearse actor B, and you say
6 this is wrong, I must rehearse actor B and you insist on
7 rehearsing actor B, are you violating an obligation as known
8 in the profession?

9 A I don't believe so.

10 THE COURT: I'm not sure I understand that.
11 Could you read that back, the last question.

12 (Record read.)

13 BY MR. KASSEL:

14 Q Mr. Schneider, what was the play from which you
15 were discharged?

16 A A Day Of Life by Murray Schisgal.

17 Q When was that produced?

18 A 1969, I think.

51 19 Q You stated that you were paid only when litigation
20 was threatened?

21 A That's correct.

22 Q Was that because there was a dispute between you
23 and the producer as to whether you were being fired for cause
24 or not for cause?

25 A That was because the producer had a limited

54 cmcq Schneider-cross

amount of money and had to hire another director and was trying not to pay me.

Q There was ultimately a resolution, you say, in which you were paid for a fee and not royalties?

A That's correct.

Q Did the other director receive royalties?

A I don't know. The play didn't run very long. It played previews that I think there were several weeks of royalty involved.

Q Did you threaten to bring litigation to recover royalties?

A I was at that time so distraught that I didn't do anything after I received my fee.

Q You will agree, won't you, that the practice in the field is that a director should receive both his fee and royalties?

A Only because --

Q No. I beg your pardon. Is that the practice, Mr. Schneider?

A It is the practice.

MR. KASSEL: I have no further questions, sir.

MR. GREGORY: No questions, your Honor.

THE COURT: All right. We will recess for lunch until 2:30.

(Luncheon recess.)

55 cmc

Hammerstein-direct

AFTERNOON SESSION - 2:30 p. m.

THE COURT: Proceed, Mr. Gregory.

MR. GREGORY: Mr. Hammerstein.

JAMES HAMMERSTEIN, called as a witness
on behalf of the defendant, being first duly sworn,
by the clerk of the court, testified as follows:

DIRECT EXAMINATION

BY MR. GREGORY:

Q Your occupation, Mr. Hammerstein?

A Director.

Q For how long have you been directing plays?

A My first play was 17 years ago.

Q Have you directed plays on Broadway?

A Yes, I have directed four plays on Broadway.

Q Would you give the names to us, please?

A Working in reverse order, I directed Butley,
Wise Child, The Paisley Convertible and Absence of a Cello.Q Directing your attention to the Absence of a
Cello, did you have an argument, or a disagreement with the
producer concerning the script of that play?A Not so much the script. I was under constant
pressure from one of the producers on that play on almost
every count. Until finally I was fired about a week before

1 56 cmcq Hammerstein-direct

2 we were to open.

3 Q What was the reason for your being fired?

4 A I never could discover. It was more or less, it
5 wasn't funny enough or it wasn't working and that I had had
6 a year, I had been on it for a year.

7 Q You worked --

8 A I worked on it for over a year, and they thought
9 they were going to -- I'm sorry.

10 Q You say you were working on it for a year?

11 A Working on it for a year, and I assumed that
12 maybe a new mind would be able to take it from an almost
13 to a big hit. I was rehired a few hours later, but I was
14 put under a great deal of pressure and the producer
15 last week was actually in on every single rehearsal looking
16 pleased if he agreed with my direction, and looking dis-
17 pleased if he didn't.

18 Q Did he demand scene changes?

19 A Well, the reason he rehired me is I pointed out
20 that the director he had to supersede me, I asked why this
21 man would do something differently, and he said he would
22 rebuild the set. And I said, but if you had the money to
23 rebuild the set why didn't we try out out of town? And did
24 he know how much money that was going to cost. And the
25 producer hadn't figured out how much money that was going to

1 57 cmer

Hammerstein-direct

2 cost, so he rehired me on financial grounds, not artistic,
3 when I pointed out to him that it was too expensive to fire
4 me. And then I was subjected to all kinds of immediate
5 pressure day to day.

6 Q You also directed The Paisley Convertible; is that
7 right?

8 A Yes.

9 Q Did you have any particular problem with that
10 show because of budget?

11 A Yes, I was told by the producer shortly after I
12 agreed to do it that everything would have to be done on
13 minimum scale and that we wouldn't even be able to try it
14 out anywhere. That it was previews for five or six days and
15 then we were to open. And I went along with that.

16 Q Was it your opinion that the play required a
17 tryout?

18 A Yes, it was. I should have known better. It
19 did need a tryout. I was right in the first place. It
20 subsequently has been very successful every place but in New
21 York City, that play.

22 Q Are you familiar with the background, or the
23 history that led to the term "first class production?"

24 A Yes. It preceded my coming into the theater,
25 which was around 1950. A first class production came out of

58 cmcg

Hammerstein-direct

1 contract that the producers had made with Equity defining
2 Equity wage scales. And I think it also held with musicians
3 union, and it was New York, Broadway shows, and the major
4 theaters on the tryout route and in Chicago in the first
5 class, it was called the first class road tour afterwards
6 which included certain set theaters that existed in Chicago,
7 Detroit and the major cities. As opposed to bus and truck,
8 which you play a college auditorium or lesser tours where
9 the actors got paid less, where the authors got paid less,
10 also.

11
12 So it was in those days, and I think that we have
13 much to owe to those days in terms of our tradition. In those
14 days it was, I think, echoed in all contracts with authors,
15 actors and musicians. We didn't have a union at that time
16 so it was not echoed with us.

17 Q Does a first class production today maintain the
18 same meaning?

19 A It does to me, certainly. I don't know what its
20 legal status has become, but it has not anything to do with
21 artistic merit in my own mind.

22 When I say it's a first class road tour, I once
23 did a first class road tour. For me I would say, fine,
24 knowing I am going to go to first class theaters, and also
25 that I am going to have to pay actors a certain amount of

1 59 cmcg

Hammerstein-direct

2 money, therefore I will get a certain kind of expensive
3 actors.

4 MR. GREGORY: No further questions.

5 MR. KASSIL: No questions, your Honor.

6 THE COURT: Thank you, Mr. Hammerstein.

7 (Witness excused.)

8 THE COURT: I think we ought to go on the record
9 on this, because Mr. Hammerstein and I have been talking about
10 the case. When I have had side bar discussions with witnesses
11 I have been talking about inconsequential things like how
12 do you spell ring-a-levio.

13 Why don't you start the discussion again, Mr.
14 Hammerstein.

15 THE WITNESS: Well, the analogy that fits this
16 employee-employer relationship best, as far as I can devise,
17 is that between an owner of a sporting team, such as a
18 baseball team, and a manager who manages the strategy of
19 the field and asks that certain players be hired and structure
20 a philosophy of how the game ought to be played under his
21 regime, and all things are consistent with that if it's done
22 well, so that the kind of players are hired that fit his
23 philosophy or he fits his philosophy to the people that he
24 hires, one or the other.

25 The owner probably is very fond of that sport,

1 60 cmcg

Hammerstein-direct

2 but has no personal expertise in it. That is, he probably
3 never played first base past the high school level usually
4 But, nevertheless, his manager is an employee.
5

6 There are other people in this organization who
7 also work for that owner who the manager never sees. The
8 pressman, the general manager. And that owner has got to
9 be the guy who sees that all these functions go well.
10 Just like a Broadway producer is responsible not just that the
11 show on the stage looks right, but that it's advertised
12 correctly, that he has adequate contracts so people aren't
13 paid too much, that he budget it correctly for the scenery.

14 He has many things that we value tremendously,
15 we don't want to do ourselves necessarily. Just like a
16 manager would have to have to sell tickets, and that's my
17 analogy.

18 THE COURT: Do you think it is a good thing in
19 baseball for a manager to be what you call an employee of
20 the owner?

52 21 THE WITNESS: Certainly. He is an employee.
22 I am sure that it gives him --

23 THE COURT: Why is he an employee of the owner?

24 THE WITNESS: Well, I am sure --

25 THE COURT: Let's talk about directors and
producers. Why is the director an employee of the producer?

1 65 cmcq Hammerstein-redirect

2 ship with the producer.

3 THE COURT: I think the baseball analogy is great.
4 Thank you very much, Mr. Hammerstein.

5 MR. GREGORY: May I ask another question, your
6 Honor, in light of your questions?

7 THE COURT: Yes.

8 REDIRECT EXAMINATION

9 BY MR. GREGORY:

10 Q Mr. Hammerstein, Judge Stewart just pointed out
11 that after the play is over the director goes his own way.
12 He is not permanently employed by the producer. That's also
13 true of the actors, is it not?

14 A Yes.

15 Q The costume designer?

16 A Yes.

17 Q The scenic designer?

18 A Very much so.

19 Q And most everybody else in the production?

20 A That's right.

21 THE COURT: Everybody is hired for one shot.

22 THE WITNESS: That's right. I was a producer at
23 one time. I think it is the only business where the books
24 are balanced once a week.

25 THE COURT: Balanced?

1 66 cmc

Hammerstein-direct/Traube-redirect

2 THE WITNESS: You have a statement once a week on
3 the entire statement of the business every week.

4 MR. GREGORY: Thank you.

5 THE COURT: Thank you, Mr. Hammerstein.

6 (Witness excused.)

7 MR. GREGORY: Your Honor, with your permission
8 I would like to recall Mr. Traube for one or two questions.

9 THE COURT: All right.

10
11 S H E P A R D T R A U B E, (recalled.)

12 REDIRECT EXAMINATION

13 BY MR. GREGORY:

14 Q Mr. Traube, I believe that you have sat through
15 this entire trial, have you not?

16 A That's correct.

17 Q You have heard all the witnesses?

18 A Yes, I have.

19 Q In your direct testimony you testified that you
20 had been in the theater world for 45 years; is that correct?

21 A Yes, sir.

22 Q Would you tell us whether the incidents that have
23 been testified to by the defendants' witnesses in connection
24 with the role of producer over the director are typical or
25 atypical in the profession?

1 68 cmcg

Traube-redirect

2 A They are typical.

3 THE COURT: They are typical?

4 THE WITNESS: They are typical.

5 Q Would you say that they do or do not accurately
6 reflect the practice in the industry?

7 MR. KASSEL: Your Honor, I object to the question
8 which characterizes the testimony as indicating control by
9 the producer over the director. I do not object to Mr.
10 Traube testifying as to whether the incidents in his opinion--

11 THE COURT: What part of the question do you --

12 MR. KASSEL: In the prior question, your Honor.

13 THE COURT: What part of the question?

14 MR. KASSEL: I believe the question stated, would
15 you state whether it is typical evidence of the control by
16 the producer over the director, something to that effect.

17 THE COURT: Well, obviously that is not a proper
18 question. I had not understood that that was in the question.
19 Will you read it back, please.

20 MR. GREGORY: I will withdraw it, your Honor, and
21 rephrase it.

22 THE COURT: All right.

23 BY MR. GREGORY:

24 Q Would you say that the incidents that have been
25 testified to by the defendants' witnesses with respect to

69 cmcq Traube-redirect

the relationship between the producer and the director were typical or atypical?

A They were typical.

O Would you say that these incidents accurately or inaccurately reflect the practice in the profession?

A They accurately reflect the practices of the profession.

MR. GREGORY: Thank you.

THE COURT: I am still a little puzzled. May I have the last two questions and answers, please.

(Record read.)

THE COURT: Mr. Kassel?

MR. KASSEL: No questions, your Honor.

THE COURT: Mr. Traube, what about the testimony of the plaintiff's witnesses? Would you give the same answer as to the question about their testimony?

THE WITNESS: On balance I believe they did, yes.

THE COURT: Are you telling me that you think their answers were not inconsistent with the answers of the defendants' witnesses, or what are you telling me?

THE WITNESS: Well, it seemed to me in many instances the plaintiff's witnesses made the point that we are trying to establish in our defense.

THE COURT: Was there any testimony, and I

1 70 cmcg

Traube

2 expect this is an unfair question because I don't expect you
3 to remember, I am not sure you were here through all the
4 testimony, but even if you were I don't expect you to remember
5 every question and answer, but were there any testimony that
6 stands out in your mind from the plaintiff's witnesses,
7 either on direct examination or cross-examination, which
8 you thought was inconsistent with what you have just said
9 about the practice of the industry?

10 THE WITNESS: Inconsistent?

11 THE COURT: Yes.

12 THE WITNESS: Not that I recall. But what I do
13 recall vividly was the testimony of Mr. Herman Levin, an
14 old colleague, that he was president of the New York League
15 of Theaters at the time the basic minimum agreement was
16 signed between the Society Stage Directors and Choreographers
17 and that he signed a contract with a labor union.

18 THE COURT: Any other questions, gentlemen?

19 MR. KASSEL: No questions, your Honor.

20 MR. GREGORY: No, your Honor.

21 THE COURT: I know that you are an expert in the
22 field we are talking about, that is the theater, and relation-
23 ships between producers and directors, but I also know as you
24 do, that it is very difficult to get any one expert to agree
25 with any other expert. But, nevertheless, it is useful,

71 cmcg Traube

not only useful but important to get the views of people who are particularly experts.

It would seem to me that the persons with the professional background, professional standing, artistic abilities, individualistic notions which I have always supposed and which the testimony has confirmed exist in successful producers and directors would find it difficult to be in a relationship on either side where there is not a large amount of give and take.

THE WITNESS: Oh yes.

THE COURT: I am going to make the question much more simple than it really is, but just for the sake of the discussion, given that much plus the fact that the producer inevitably is the man with the money, and the money is what makes the wheels go, can we conclude that the director who was hired to run the operating day to day business, as I understand it, I guess I am going to have to get a little legal here, but perhaps you can follow me -- well, let's leave out the legal part of it because that is unfair to you.

What can we conclude about the extent to which the director is subservient to the will of the producer?

THE WITNESS: I would say totally dependent on the disposition of the producer.

THE COURT: Because of the money?

72 cmcg

Traube

THE WITNESS: No. I'd like to take exception to that, your Honor.

THE COURT: No, I am not stating a position, I am just asking a question.

THE WITNESS: I feel a considerably amount of emotion as I have served as a producer all my life. I don't think a producer is just a moneyman. I think he is responsible for the provision for raising the funds and for the administering of them properly. But, above all, it seems to me it must be a man of probity, a man with certain artistic sensibility, a man who is capable of leading, guiding the destinies of the branch and a man capable of knowing when he is to collaborate with his director and when not.

Now, unhappily the jungle existence of the Broadway theater is such that people struggling to earn a living to support their children and their wives find themselves in many instances historically where they have been fleeced and exploited beyond endurance by men who aren't real probity, by men who are not really artists, and this organization that I had the honor to organize was devoted to exactly that objective, to rid ourselves of the jungle climate we were in. The Society had its contract welcomed by anybody in any decent standards in the Broadway theater.

73 cmeg

Traube

We have been a force for good, we have been a force for progress, and there is stability in that jungle now because our union exists.

THE COURT: What kind of stability have you brought to the jungle?

THE WITNESS: People are paid their accustomed monies. They do their work better than if they were constantly apprehensive, if they were going to take the matter into court in order to collect. Prior to the existence of this particular union the circumstances that afflicted directors -- for instance, a good friend of mine, Agnes DeMille, did the choreography for Oklahoma for \$50 a week, and when it became a film, it became a movie, she got nothing. Now, there is no equity in that.

THE COURT: If I recall correctly it seems that I bought four tickets to Oklahoma way back and I had to do it for a special occasion, I think I paid \$50 for four tickets.

THE WITNESS: I am sure you did.

THE COURT: Did she only get \$50 a week?

THE WITNESS: \$50 a week. And there were some choreographers that got nothing on very successful productions. That's why we organized.

THE COURT: Well, you still haven't gotten my question. All you are telling me is that some producers,

74 cmc

Traube

or producers may be generally, were not very nice people to deal with.

THE WITNESS: But beyond that I submit that the role the producer has to be a decent one, it has to be a creative one, it has to be one where he displays his authorities and his controls to the most progressive results.

THE COURT: Can he do that if he is constantly subject to the whim of a producer, doesn't he have to have a lot of discretion of his own?

THE WITNESS: Subject to the whim of the producer? Are we referring to the director now?

THE COURT: No, I'm talking about the director. Oh, you are talking about --

THE WITNESS: I am talking about the producers. The role of the producer.

THE COURT: I am confused then. You thought this Society that you organized was good for what purpose?

THE WITNESS: To bring order into the dislocated conditions that existed in the Broadway --

THE COURT: With respect to --

THE WITNESS: With respect to directors and choreographers and producers as well.

THE COURT: Who were you anxious to help?

THE WITNESS: In particular to help the directors

1 75 cmc

Traube

2 and the choreographers.

3 THE COURT: That is what I understood you to
4 say.

5 THE WITNESS: Right. But there were many
6 producers --

7 THE COURT: You were saying that producers
8 were generally tough to get along with.

9 THE WITNESS: With certain exceptions?

10 THE COURT: Of course.

11 THE WITNESS: There were many decent producers.
12 But many producers were subjected to unfair competition by
13 producers who were not men of probity.

14 THE COURT: Well, let me go back to my question.
15 Doesn't a director under normal circumstances desire and in
16 fact need to have an opportunity to act without regard to
17 the whim of the producer? And, on the other hand, he should
18 have discretion. Isn't that part of your thinking?

19 THE WITNESS: I think your Honor some of our
20 witnesses testified that they welcome the advice and support
21 of a good strong producer on the show. All of us do.

22 THE COURT: You are not telling me a director
23 wants to have the producer tell him everything to do.

24 THE WITNESS: No, but he wants a sounding board,
25 he wants to be told he is on the right track, he wants to be

76 cmc

Traube

able to submit ideas to him. This is where I thought many of the witnesses for the plaintiff made our points, that the theater is a collective institution where the playwright, the director, the producer frequently the star, the choreographer, consult and collaborate and arrive at conclusions.

THE COURT: I must say that it is the impression I have got that if you are going to be successful you have got to do that.

Thank you very much, Mr. Traube.

THE WITNESS: Thank you very much, your Honor.

MR. GREGORY: Your Honor, the defendant has one more witness, Mr. Frank Corsaro. You may recall that Mr. Julien testified that when he was on the unfair list Mr. Corsaro was the director which he approached to direct the play and Mr. Corsaro told him that he would not direct it, the play, as long as Mr. Julien's name was on the unfair list.

Mr. Corsaro is at Houston and I have learned that he is scheduled to return to New York on June 5, and I have also learned that he will testify on June 6th if that will fit everyone's convenience. I don't think his testimony would be very long.

THE COURT: Well, as far as I am concerned that would suit my convenience.

Plaintiff's Exhibit 1

THE LEAGUE OF NEW YORK THEATRES, INC.
and
SOCIETY OF STAGE DIRECTORS AND CHOREOGRAPHERS

COLLECTIVE BARGAINING AGREEMENT

This agreement is made the 13th day of August 1962, by and between The League of New York Theatres, Inc., hereinafter called the "League"; having its principal office at 137 West 48th Street, New York City, for and on behalf of itself and its present and future members, hereinafter called the "Producers," and the Society of Stage Directors and Choreographers, hereinafter called the "Society," having its principal office at 140 West 55th Street, New York City, for itself and on behalf of its present and future members.

In consideration of the mutual covenants and conditions herein contained, the parties hereto do hereby agree as follows:

1. The Producers recognize the Society as representative of its member Directors and Choreographers employed in connection with any first class theatrical production of the Producers performed in the United States.

(a) A first class theatrical production is a play (dramatic play, revue, musical or a combination thereof) presented on the speaking stage under a Producer's management in a first class theatre, in a first class manner with a first class cast. A first class theatrical production shall not include productions of the following type or nature:

- (1) Vaudeville-type shows;
- (2) Concert-type shows of which VICTOR BORGE PRESENTS, AN EVENING WITH NICHOLS AND MAY, and AT THE DROP OF A HAT, are illustrative;
- (3) Readings of which Dorothy Stickney in THE LOVELY LIGHT, John Gielgud in AGES OF MAN and DON JUAN IN HELL are illustrative.
- (4) Night clubs and theatre restaurants, but Las Vegas shows will be considered "first class" where so classified by Actors Equity as part of a road tour.
- (5) Foreign importations brought over substantially intact, where original direction was performed abroad. Rehearsal direction to meet conditions on the American stage, including the rehearsal of extras, shall not bring such productions within the coverage of this contract.
- (6) Ballets;
- (7) Symphonic and musical importations; and

~~EXHIBIT 1~~

(8) In addition to the foregoing, any production not under the jurisdiction of Actors Equity Association shall not be considered to be a first class theatrical production.

(b) In return for recognition of the Society granted by the Producers (i.e., present and future members of the League) in connection with first class theatrical productions of the Producers performed in the United States, the Society agrees that it will not attempt to seek recognition from and/or to bargain with the Producers, either individually or collectively, with respect to productions of the types listed in sub-paragraph (1) through (8), above. A theatrical production presented on the speaking stage in other than a first class theater shall not be covered by this contract.

2. The Society agrees to admit to membership on non-discriminatory terms any present or future employee of the Producers. Moreover, the Society will not invoke any federal statute or other laws or take any other action to bar alien Directors from the United States and will admit alien Directors to membership on a non-discriminatory basis.

3. The Society agrees that its Constitution and By-Laws will provide that no initiation fee, or charge similar thereto, shall exceed One Hundred Dollars (\$100.00) en toto. This commitment shall be final and binding, in and of itself, for a period of twenty (20) years from the execution date of this contract. It shall not expire at the expiration date of this contract and shall not be subject to reopening. This binding commitment is derived from the letter of Ervin Feldman, counsel for the Society, to Herman Shumlin, a representative of the League, dated March 16, 1962, which letter is annexed hereto.

4. The Producers agree that, as a condition of employment, any Director or Choreographer hired after the execution date of this agreement will be required to join the Society after the 30th day following his or her employment or the effective date of this agreement, whichever is later. This 30-day grace period applies to the initial engagement of a Director or Choreographer contracted for after the execution date or effective date of this agreement, whichever is later. Thereafter, with respect to succeeding engagements, Directors or Choreographers, as a condition of employment, shall be or become members of the Society when hired by a Producer; provided, however, that nothing

in this paragraph shall be construed to require the Producer to cease employing or refrain from employing any such person if the Producer has reasonable grounds for believing that:

A. Membership in the Society was not available to him on the same terms and conditions generally applicable to other members, or

B. Membership in the Society was denied or terminated for reasons other than his failure to tender the periodic dues and the initiation fee uniformly required by the Society as a condition of acquiring or retaining membership.

The Society will establish such by-laws as will provide for honorable withdrawal and re-entry upon reasonable conditions. In no event will honorable withdrawal be conditioned on the payment by any individual of more than dues arrearages, not to include fines, and in no event will honorable re-entry be conditioned on the payment by any individual of a sum in excess of the maximum initiation fee set forth in paragraph 3 of this contract.

5. It is agreed that this contract and its annexed schedules does not cover a Producer, not previously a member of the Society, when such a Producer is acting as a Producer-Director or a Producer-Choreographer. No such Producer-Director or Producer-Choreographer will be induced, coerced or otherwise required to become or remain a member of the Society. Any Producer-Director or Producer-Choreographer previously a member of the Society shall not qualify hereunder and shall remain a member of the Society pursuant to Paragraph 4 of this contract. A Producer is a person whose name is on the program as the presenter or co-presenter of the play and as a general partner of the producing partnership or as an officer of the producing corporation.

6. CONDITIONS OF EMPLOYMENT

(a) Attached hereto and made part of this agreement are the following schedules of minimum basic wage scales and working conditions:

SCHEDULE A - MINIMUM BASIC PROVISIONS FOR DIRECTORS -
FIRST-CLASS PRODUCTIONS

SCHEDULE B - MINIMUM BASIC PROVISIONS FOR CHOREOGRAPHERS -
FIRST-CLASS PRODUCTIONS

(b) The applicable provisions of this agreement and the provisions contained in the appropriate schedule shall be deemed incorporated in the individual contract of employment between each Producer and each Director or Choreographer. The Producer, Society, and the individual Director or Choreographer shall each

be bound thereby.

(c) Anything contained in this agreement or the schedules attached hereto shall not be construed to prevent any Director or Choreographer from negotiating with and obtaining from any Producer any better terms and conditions than are provided for in this agreement without limitation.

(d) The Society will not enter into any contract with any person, firm or corporation, which contract provides more favorable terms than those contained in the collective bargaining agreement and its annexed schedules.

(e) The producer agrees that waiver by any Director or Choreographer of any of the terms of this agreement, including the appropriate schedule, shall not be requested of the Director or Choreographer or effective unless the consent of the Society is first obtained; provided, however, one reduction of royalties of not more than two weeks' duration, may be made without the consent of the Society, provided that an agreement, in writing, for such reduction be signed by the Producer and Director or Choreographer and filed with the Society within one week after the reduction is agreed upon.

Within the two week period the director consenting, the Producer may apply for the approval by the Society of an extension of the reduction. The Society must act upon this request within 24 hours of receipt. In the event the extension is not approved, the Producer may request arbitration before any one of the following arbitrators:

1. Professor Herbert Wechsler
2. Howard Lindsay;
3. Herman Shumlin;
4. Morton Baum;
5. Honorable Samuel Rosenman
6. Honorable Bernard Botein

A copy of the request for arbitration shall be served on the Director and the Society concurrently with the dispatch of the request to the arbitrator.

An arbitration hearing shall be held within twenty-four hours from the time the request is received by the arbitrator. A final and binding decision shall be issued immediately after the hearing.

In the event of the death or resignation of one or more of the arbitrators, the parties shall agree upon a successor or successors within 60 days.

If the parties are unable to agree, said successor or successors shall be appointed by the American Arbitration Association.

(f) It is agreed that the direction of "musical numbers" is a usual part of the duties of a director and/or choreographer and that compensation for such direction is included in the minimum fee and royalty provisions of Schedule A and B annexed hereto.

7. COST OF LIVING

One year from the effective date of this agreement, and annually thereafter, minimum fees and minimum royalties shall be automatically adjusted to reflect the increase in the cost of living which may have taken place during the previous year. The index to be used shall be the Consumer Price Index for the City of New York (1957-1959 = 100) published by the Bureau of Labor Statistics, United States Department of Labor. The index for the City of New York as of the effective date of this contract shall be the base index.

Cost of living adjustments shall operate prospectively and will apply only to minimum basic contracts executed on or after the date of the adjustment. In no event shall these adjustments apply to contracts which provide fees or royalties in excess of the minimum. Each annual adjustment shall be applied to the minimum fees and royalties as set forth in this agreement when executed. Cost of living adjustments shall not be pyramided.

8. NO STRIKE, NO LOCKOUT

The parties agree that during the terms of this agreement, the Producers shall not lock out any Director or Choreographer and the Society will not cause or permit any of its members to take part in any strike, work-stoppage, slowdown or concerted or organized curtailment of work (sympathetic, general, or any other kind) or any other interference with the operation of the Producer's business.

9. ARBITRATION OF DISPUTES

In the event any dispute concerning interpretation or application of this contract and/or its annexed schedules, together with any individually secured riders annexed thereto (hereinafter referred to in this paragraph as "riders"), arises between the Society and the Producers or between a Director or Choreographer and a Producer, the parties agree that a prompt attempt will be made to settle the matter amicably.

(a) Whenever such a dispute arises, a representative of the Society and/or the Director or Choreographer and the representative of the Producer and/or Producers involved shall meet and endeavor to conciliate the dispute. These meetings shall be held within the following periods: (1) Within ten (10) days after a play closes on its tryout. (2) Within ten (10) days after a play opens in New York. (3) If a play is touring within ten (10) weeks after the tour commences.

(b) In the event of a failure to settle a dispute concerning interpretation or application of this contract, and/or its annexed schedules including riders, the Society and/or a Director or Choreographer or the Producers, or a Producer, whoever may be the aggrieved party, or parties, shall deliver to the other party or parties a written statement of the grievance, which statement shall set forth the material facts of the contract breach or violation alleged. The other party or parties to the dispute may file a written reply if they so elect. The parties shall promptly attempt to agree upon an arbitrator. If the parties cannot do so within ten (10) days or within 24 hours in case of an alleged breach of the No-Strike, No-Lockout Clause, an arbitrator shall be appointed by the American Arbitration Association. The rules of procedure in such arbitration shall be the applicable rules as then currently published and in effect at the American Arbitration Association. All arbitration proceedings are to be conducted in the City of New York.

(c) The cost and expenses of the arbitration shall be shared equally by the Society and Producer or Producers involved.

(d) Where disputes are subject to arbitration under this section, they shall be settled by arbitration in accordance with the laws of the State of New York. Arbitration shall be the sole and exclusive remedy for disputes which arise under this contract and its schedules including riders.

(e) No claim on behalf of a Director or Choreographer, other than a claim for breach of contract requiring a money award, is within the jurisdiction of the arbitrator. The arbitrator shall not have the power to require a Producer or Producers to reinstate a Director or Choreographer who he finds to have been discharged in breach of this contract and/or its annexed schedules including riders, the remedy being limited solely to full payment for all compensation due under the Director's or the Choreographer's contract as same accrues. The

arbitrator shall limit himself strictly to questions concerning interpretation and application of this contract and its schedules including riders and shall in no way alter, amend, modify, add to or subtract from any provisions of this contract and its annexed schedules including riders.

(f) The Producers recognize that nothing in this Paragraph shall be construed as prohibiting an individual Director or Choreographer to bargain on an individual basis with an individual Producer to secure arbitration provisions conferring jurisdiction and powers upon the arbitrator in excess of the jurisdiction and powers conferred upon the arbitrator herein.

(g) The Society of Stage Directors and Choreographers and The League of New York Theatres, Inc. shall have the right to participate in all arbitration proceedings.

10. WAIVER OF BARGAINING OVER SUBSIDIARY RIGHTS

(a) The Society agrees that this contract and its annexed schedules do not vest in any Director or Choreographer the right to participate in any of the subsidiary rights of the dramatist or Producer.

(b) The Society agrees to waive bargaining with respect to any and all subsidiary rights of the dramatist and/or Producers for a period of twenty years from the execution date of this contract. The Society agrees that this waiver includes both direct and indirect attempts by it to secure such rights from the Producers and further agrees that this waiver will be adhered to in good faith. This waiver shall remain in effect after other provisions of this contract have expired, and regardless of any reopenings which may be provided for herein.

(c) These binding commitments are derived from the letter of Erwin Feldman, counsel for the Society, to Herman Shumlin, a representative of the League, dated March 16, 1962, which letter is annexed hereto.

(d) Subsidiary rights include, but are not limited to the following:

1. Stock and summer stock presentations;
2. Amateur presentations;
3. Musical comedy, operetta and grand opera based on a play;
4. Radio;
5. Television;
6. Second class touring rights;
7. Condensed and tabloid versions;

8. Concert tour versions;
9. Commercial uses;
10. Foreign language versions;
11. Original cast album of musical or straight plays;
12. Supper club or night club presentations;
13. Off-Broadway;
14. Fair presentations and ice shows;
15. Motion pictures;
16. English speaking rights around the world;
17. British rights;
18. Foreign rights;
19. Any mechanical or electronic devices whether now in existence or hereafter invented and/or put in use; and
20. Publishing rights.

(e) The Producers recognize that the provisions contained in this paragraph do not supersede the provisions of paragraph 6 (c) of this contract without limitation. The Producers covenant not to engage in a concerted effort to prevent individual directors or choreographers from negotiating with individual Producers with respect to subsidiary rights, and the Society covenants that no group of its members will engage in a concerted attempt to bargain with respect to those rights.

11. WAIVER AS TO EXISTING RELATIONS

(a) The Society agrees that this contract and its annexed schedules do not in any manner affect existing relations between Producer, Director, Choreographer and dramatist as practiced in the New York legitimate theatre in connection with the duty, authority, and control of any production.

(b) The Society agrees to waive bargaining with respect to the relations between Producer, Director, Choreographer and dramatist as practiced in the New York legitimate theatre in connection with the duty, authority, and control of any production. This waiver shall be for twenty (20) years from the execution date of this contract. The Society agrees that this waiver includes both direct and indirect attempts by it to bargain with respect to the aforesaid relations and further agrees that it will adhere to this waiver in good faith. The waiver shall remain in effect after other provisions of the contract and its annexed schedules have expired and regardless of any openings which may be provided for herein.

(c) These binding commitments are derived from the letter of Erwin Feldman, counsel for the Society, to Herman Shumlin, a representative of the League, dated March 16, 1962, which letter is annexed hereto.

12. DURATION

This agreement together with the schedules annexed hereto shall become effective on *August 13*, 1962, and remain in effect until *August 12*, 1972, except for paragraphs 3 (initiation fee), 10 (a), (b), (c), (d), and (e) (waiver of subsidiary rights), and 11 (a) and (b) (waiver as to existing relations), which paragraphs shall remain in full force and effect for a period of twenty years from the execution of this contract with its annexed schedules.

13. REOPENINGS

Reopenings will be strictly limited to the following:

(a) PENSIONS - if and when Dramatists or Scenic Designers receive pensions. In no event will the amount of pension contributions agreed upon, if any, be based on more than \$450. per week royalties, nor will pension contributions or pensions, if agreed upon, exceed those received or paid by virtue of any agreement with the Dramatists or Scenic Designers. In no event is this reopening provision to constitute a commitment by the Producers to grant pension to Directors or Choreographers even if Dramatists or Scenic Designers receive pensions.

It is recognized that this reopening provision does not create an obligation on the part of the Producers to pay the maximum unless agreed to in negotiations.

Should the parties be unable to reach an agreement in negotiation, the matter shall be submitted to arbitration. If the parties cannot agree upon an arbitrator, an arbitrator shall be appointed by the American Arbitration Association. The rules and procedure in such arbitration shall be the applicable rules as then currently published and in effect at the American Arbitration Association. All arbitration proceedings are to be conducted in the City of New York. The cost and expenses of the arbitration shall be shared equally by the Society and the Producer or Producers involved. Arbitration shall be conducted in accordance with the laws of the State of New York. Decisions of the arbitrator shall be final and binding, but in no event shall his award exceed the maximum as set forth above.

(b) ELECTRONIC DEVICES - which visually reproduce and transmit on film tape, or live, the production from the stage or from a studio to viewers at home via paid or commercial television or any other means of remote reproduction, or to theatres where admission is charged, when that production remains substantially the same as originally directed with the original company.

When a production is reproduced as described above, the Director and the Choreographer may receive no more, as a result of negotiations stemming from this reopening, than the following: If the rights are sold or leased whether for a flat sum or percentage royalties, a sum proportionate to that received by the author based upon the original royalties paid to the author, the Director and the Choreographer respectively.

It is recognized that this reopening provision does not create an obligation on the part of the Producer to pay the maximum unless agreed to in negotiations.

Should the parties be unable to reach an agreement in negotiations, the matter shall be submitted to arbitration. If the parties cannot agree upon an arbitrator, an arbitrator shall be appointed by the American Arbitration Association. The rules and procedure in such arbitration shall be the applicable rules as then currently published and in effect at the American Arbitration Association. All arbitration proceedings are to be conducted in the City of New York. The cost and expenses of the arbitration shall be shared equally by the Society and the Producer or Producers involved. Arbitration shall be conducted in accordance with the laws of the State of New York. Decisions of the arbitrator shall be final and binding, but in no event shall his award exceed the maximum as set forth above.

14. COMPLETE AGREEMENT

The parties acknowledge that during the negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Producers and the Society, for the life of this agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively

with respect to any subject or matter referred to, or covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this agreement.

15. SEPARABILITY

It is not the intent of either party hereto to violate any laws or any rulings or regulations of any governmental authority or agency. The parties hereto agree that in the event any provisions of this agreement are held or constituted to be void or as being in contravention of any such laws, rulings or regulations, nevertheless, the remainder of the agreement shall remain in full force and effect unless the part or parts so found to be void are wholly separable from the remaining portions of this agreement.

16. Any contract between any Producer and any individual Director or Choreographer executed on or before the execution date of this contract, with its annexed schedules, shall in no way be affected by any of the provisions of this contract or said schedules unless the individual contract expressly incorporates the provisions of this contract and its schedules by reference.

IN WITNESS WHEREOF, the parties have set their hands and seals this
13th day of August 1962.

Witness:

14 Edwin Feldman

Witness:

14 Herman Shubin

THE LEAGUE OF NEW YORK THEATRES, INC.

By 15/ Robert Whitehead

SOCIETY OF STAGE DIRECTORS AND
CHOREOGRAPHERS

By 14 Shepard Smith

SCHEDULE AMINIMUM BASIC PROVISIONS FOR DIRECTORS
FIRST-CLASS PRODUCTIONS1. Representations Regarding the Engagement of a Director.

No Producer may make any representation regarding the engagement of a Director unless he has completed negotiations for an agreement for his services.

2. Fees, Royalties and Duration of Obligation.

(a) The minimum fee for the Director of a first-class production shall be no less than Two Thousand Dollars (\$2,000.00) Twenty-five percent (25%) of the fee is to be paid directly to the Director on signing of the contract and is non-returnable. The balance of the fee is payable in three equal payments at the beginning of the first, second and third weeks or rehearsal or not later than one week before the first performance, whichever is shorter. If a production is abandoned, there shall be no liability for fee payments due the Director after the date of the abandonment. Those fees accrued to the Director prior to the abandonment may be retained by him and will be paid to him.

(b) If a Producer has an unsatisfied judgment against him, because of non-payment to a Director or Choreographer, or has had such a judgment entered against him within twelve (12) months prior to the signing of the contract with the Director, the Society may require the Producer to post a bond for the seventy-five percent (75%) balance of the fee. If a production is abandoned, there shall be no liability on the bond for fee payments due after the date of the abandonment.

(c) In addition to the contract basic fee, the Director of a first-class dramatic production shall receive not less than one percent (1%) of the gross weekly box office receipts and the Director of a musical shall receive not less than one-half (1/2) of one percent (1%) of the gross weekly box office receipts, which weekly payment shall be payable no later than ten days after the week for which the weekly payments are due for the duration of the run of the play or musical.

(d) For purposes of calculating royalties, gross weekly box office receipts shall be the gross box office receipts as evidenced by the statements prepared and signed by the theatre and the producer after the following deductions:

1. All admission taxes levied by any governmental agency on gross receipts.
2. Pension and welfare deductions exercised as a result of the New York City tax abatement program.
3. Theatre party commissions and discounts, and cut rate sales.
4. Subscription fees.
5. Actors Fund benefits.
6. Any deductions similar to the ones listed above.

In bus or truck operations where a Producer receives a guaranteed lump sum, said sum less booking commission shall be the basis for the computation of royalties in lieu of gross box office receipts as defined above. Any sum received by the Producer in excess of the guaranteed lump sum shall also be included in computing royalties.

(e) The Director shall have the option to direct any and all companies presenting the play in the United States under the auspices of the Producer or for which the Producer or a partnership of which he is a general partner may license the production rights. In the event that the Director elects to direct such additional company or companies, he shall receive no less than one-half (1/2) of the original fee for each additional company directed by him in the United States and Canada. In addition, he shall receive no less than one percent (1%) of the gross weekly box office receipts for a drama and one-half (1/2) of one percent (1%) of the gross weekly box office receipts for a musical. If the Director does not elect to exercise his option, he will not receive any fee, but will receive no less than one half percent (1/2%) of the gross weekly box office receipts for a drama and one-quarter percent (1/4%) of the gross weekly box office receipts for a musical. When the Director does not elect to direct such additional company or companies the person chosen by the Producer to reproduce the work shall not be covered by any provision of this schedule or the collective bargaining agreement to which it is annexed. The Producers agree that they will not attempt to induce such "person" to refrain from becoming a member of the Society and the Society agrees that it will in no way attempt to seek recognition for or bargain on behalf of such "person." The Director must make his election known to the Producer, in writing, within ten (10) days after receipt of written notice of said election from the Producer.

(f) A maximum of eight consecutive weeks in the case of a drama and ten consecutive weeks in the case of a musical after the first public performance out of town shall be the limit of the Director's obligation prior to the New York opening. The Director agrees that, in cases where additional time is required during the out-of-town tryout beyond this period, he shall continue to function as the Director, provided he is available and uncommitted by virtue of any other professional engagement.

(g) Should a production be suspended, because of strike, lockout, fire, fl. of the public enemy or act of God, the period of the Suspension shall not be considered as part of the consecutive employment periods set forth in Paragraph 3 (f). The director agrees that in cases where a suspension of production occurs prior to the date the production opens in New York, he shall continue to function as the Director, provided he is available and uncommitted by virtue of any other professional engagements contracted for prior to said suspension.

Should the production require additional directorial services to bring it to completion, and should the Director be unable to continue because of such a prior commitment, his royalty schedule shall be as follows:

1. Production not in rehearsal - no royalties
2. In rehearsal at least two weeks - $1/3$ of royalties
3. After out-of-town opening - $2/3$ of royalties

Fees received up to the time of the suspension may be retained should a Director be prevented from continuing as set forth above.

3. Per Diem Expenses

Out-of-town expenses are to be paid to the Director at the rate of not less than \$25.00 per diem. If a Producer has an unsatisfied judgment against him, because of non-payment to a Director or Choreographer, or has had such a judgment entered against him within twelve (12) months prior to the signing of the contract with the Director, the Society may require the Producer to post a bond for Three Hundred Fifty Dollars (\$350.00). If a production is abandoned, there shall be no liability on the bond, or otherwise, for per diem expenses after the date of the abandonment.

4. Billing

(a) With respect to each company directed by the Director, he shall receive billing in all programs and houseboards.

(b) Such credit shall appear on a separate line in an agreed size and type and position on which no other credit shall appear.

5. No Director may be dismissed, except where the Director is guilty of breach of contract, without the full payment for all compensation due him under the contract as same accrues.

6. Collection of Royalties by the Society

The Society, at the option of the Director, shall also receive, collect and disburse to the members all weekly royalty payments due under such agreements and receive, investigate and approve producers' statements reflecting accuracy of such royalty payments.

7. (a) The Director agrees to supervise and maintain the quality of the production; and, in furtherance thereof he is required to see a complete performance of a production that he has directed at least once every eight (8) weeks, unless the Director's contractual obligations prevent him or her from doing so, in which case the Director shall see the show as soon as his or her contractual obligations permit. After seeing a complete performance of the production, the Director shall redirect it, without any additional compensation, if he deems it necessary to do so.

(b) Should the Director fail to comply with the requirements set forth in Paragraph 7 (a), the Director shall forfeit one-half (1/2) of his or her royalties until Paragraph 7 (a) is complied with at which time full royalty payments shall be resumed.

SCHEDULE BMINIMUM BASIC PROVISIONS FOR CHOREOGRAPHERS
FIRST-CLASS PRODUCTIONS1. Representations Regarding the Engagement
of a Choreographer

No Producer may make any representation regarding the engagement of a Choreographer unless he has completed negotiations for an agreement for his services.

2. Fees, Royalties and Duration of Obligation.

(a) The minimum fee for the Choreographer of a first-class production shall be not less than One Thousand Five Hundred Dollars (\$1,500). Twenty-five percent (25%) of the fee is to be paid directly to the Choreographer upon signing of the contract, and the balance is payable in three equal payments at the beginning of the first, second and third weeks of rehearsal, or not later than one week before the first performance, whichever period is shorter. If a production is abandoned, there shall be no liability for fee payments due the Director after the date of the abandonment. Those fees accrued to the Director prior to the abandonment may be retained by him and will be paid to him.

(b) If a Producer has an unsatisfied judgment against him, because of non-payment to a Director or Choreographer, or had such a judgment against him within twelve (12) months prior to the signing of the contract with the Choreographer, the Society may require that the Producer post a bond for the seventy-five percent (75%) balance of the fee. If a production is abandoned, there shall be no liability on the bond, for fee payments due after the date of the abandonment.

(c) In addition to the contract basic fee, the Choreographer of a first-class production shall receive not less than one-third ($1/3$) of one percent (1%) of the gross weekly box office receipts, which weekly payments shall be payable no later than ten days after the week for which the weekly payments are due.

(d) For purposes of calculating royalties, gross weekly box office receipts shall be the gross box office receipts as evidenced by the statements prepared and signed by the theatre and the Producer after the following deductions:

1. All admission taxes levied by any governmental agency on gross receipts.

2. Pension and welfare deductions exercised as a result of the New York City tax abatement program.
3. Theatre party commissions and discounts, and cut rate sales.
4. Subscription fees.
5. Actors Fund benefits.
6. Any deductions similar to the ones listed above.

In bus or truck operations where a Producer receives a guaranteed lump sum, said sum less booking commission shall be the basis for the computation of royalties in lieu of gross box office receipts as defined above. Any sum received by the Producer in excess of the guaranteed lump sum shall also be included in computing royalties.

(e) The Choreographer shall have the option to choreograph any and all companies presenting the play in the United States and Canada under the auspices of the Producer or for which the Producer or a partnership of which he is a general partner may license the production rights. In the event that the Choreographer elects to choreograph such additional company or companies, he shall receive one-half ($1/2$) of the original fee for each additional company choreographed by him in the United States and Canada. In addition, he shall receive no less than one-third ($1/3$) of one percent (1%) of the gross weekly box office receipts.

In the event that for any reason whatsoever the Choreographer does not elect to choreograph such additional company or companies, the Producer shall be free to select the person for such additional company or companies. When the Choreographer does not elect to choreograph such additional company or companies the person chosen by the Producer to reproduce the work shall not be covered by any provision of this schedule or the collective bargaining agreement to which it is annexed. The Producers agree that they will not attempt to induce such "person" to refrain from becoming a member of the Society and the Society agrees that it will in no way attempt to seek recognition for or bargain on behalf of such "person." If the Choreographer does not elect to exercise his option, he will not receive any fee, but will receive no less than one-sixth ($1/6$) of one percent (1%) of the gross weekly box office receipts derived from any and all such companies. The Choreographer must make his election known to the Producer, in writing, within ten (10) days after receipt of written notice of said election from the Producer.

(f) A maximum of ten consecutive weeks after the first public performance out of town shall be the limit of the Choreographer's obligation prior to the New York opening. The Choreographer agrees that, in cases where additional time is required during the out-of-town tryout, beyond this period, he shall continue to function as the Choreographer, provided he is available and uncommitted by virtue of any other professional engagement.

(g) Should a production be suspended, because of strike, lockout, fire, flood, act of public enemy or act of God, the period of the suspension shall not be considered as part of the consecutive employment periods set forth in Paragraph 3 (f). The Choreographer agrees that in cases where a suspension of production occurs prior to the date the production opens in New York, he shall continue to function as the Choreographer, provided he is available and uncommitted by virtue of any other professional engagements contracted for prior to said suspension.

Should the production require additional choreographical services to bring it to completion, and should the Choreographer be unable to continue because of such a prior commitment, his royalty schedule shall be as follows:

1. Production not in rehearsal - no royalties
2. In rehearsal at least two weeks - 1/3 of royalties
3. After out-of-town opening - 2/3 of royalties

Fees received up to the time of the suspension may be retained should a Choreographer be prevented from continuing as set forth above.

3. Per Diem Expenses

Out-of-town expenses are to be paid to the Choreographer at the rate of not less than Twenty-five Dollars (\$25.00) per diem. If a Producer has an unsatisfied judgment against him, because of non-payment to a Director or Choreographer, or has had such a judgment entered against him within twelve (12) months prior to the signing of the contract with the Choreographer, the Society may require the Producer to post a bond for Three Hundred and Fifty Dollars (\$350.00). If a production is abandoned, there shall be no liability on the bond, or otherwise, for per diem expenses after the date of the abandonment.

4. Billing

With respect to each company choreographed by the Choreographer, he shall receive billing in all programs and houseboards.

5. The Choreographer shall have an assistant of his choice during the entire rehearsal and during part or all of the out-of-town tryout period. The duration of the assistant's employment and the compensation he shall receive shall be negotiated between the assistant and the Producer. The assistant shall not be covered by the provisions of this Schedule or by the Collective Bargaining Agreement to which this Schedule is annexed. It shall not be deemed a breach of this contract if the Choreographer waives this requirement in regard to the engagement of an assistant when such a waiver is negotiated by the Choreographer and the Producer. Notice need not have been given to the Society. The Choreographer shall have the right to designate a captain or replacement among the dance company, who, after the show has opened in New York, shall have the authority to call the necessary rehearsals and rehearse understudies and replacements to maintain the quality of dancers' performances. The duration of the dance captain's employment and the compensation he shall receive shall be negotiated between the dance captain and the Producer. The captain shall not be covered by the provisions of this Schedule or by the Collective Bargaining Agreement to which this Schedule is annexed. In addition, the Choreographer shall have the right to designate a replacement for the captain on the same terms and conditions as stated above, provided, however, that the Choreographer is readily available to make such designation.

6. The choreography shall not be changed or altered or deleted after the New York opening without first consulting with the Choreographer.

7. The Choreographer shall select or approve a dance rehearsal pianist who will be at the Choreographer's disposal for the rehearsal, road and tour period. The duration of the rehearsal pianist's employment and the compensation he shall receive shall be negotiated between the pianist and the Producer. The pianist shall not be covered by the provisions of this Schedule or by the Collective Bargaining agreement to which this Schedule is annexed. The Choreographer shall have first call on the services of the pianist. However, when not occupied with dance routines, the pianist shall be available to the rest of the company.

8. Maintaining the Quality of a Production

(a) The Choreographer is required to see a complete performance of a production he has choreographed at least every eight (8) weeks unless the Choreographer's contractual obligations prevent him or her from doing so, in which case

the Choreographer shall see the show as soon as his or her contractual obligations permit. After seeing a complete performance of the production, the Choreographer shall rehearse it, without any additional compensation, if he deems it necessary to do so.

(b) Should the Choreographer fail to comply with the requirements set forth in Paragraph 8 (a), the Choreographer shall forfeit one-half of his or her royalties until Paragraph 8 (a) is complied with at which time full royalty payments shall be resumed.

9. No Choreographer may be dismissed, except where the Choreographer is guilty of breach of contract, without full payment for all compensation due him under the contract as same accrues.

10. Collection of Royalties by the Society

The Society, at the option of the Choreographer, shall also receive, collect, and disburse to the members all weekly royalty payments due under such agreements and receive, investigate and approve producers' statements reflecting accuracy of such royalty payments.

SOCIETY OF STAGE DIRECTORS & CHOREOGRAPHERS, INC.
 140 West 55th Street
 New York 19, New York

March 16, 1962

Mr. Herman Shumlin
 11 East 48th Street
 New York City

Dear Herman:

This will confirm the action which was unanimously ratified at the general membership meeting of the Society last Wednesday evening. The Society accepted the proposals on the points which we discussed, which were as follows:

1. That the Society will not in any contract which may result from negotiations between the League and the Society and any renewal of such contract, for a period of no less than twenty years, demand as a condition to be included in any such negotiated minimum basic agreement.

(a) Any provision which would give to any director or choreographer participation in any of the subsidiary rights of the dramatists and/or producers.

(b) Any condition which would change the present relations between producer, director and dramatist as practiced in the New York legitimate theatre in connection with the duty, authority and control of any production.

2. That for membership in the Society, the Constitution and By-Laws will provide that no initiation fee will exceed \$100.

It is, of course, understood that the provisions of par. 1. shall in no way be construed to prevent any director or choreographer from negotiating with and obtaining from any producer, better terms without limitation, than are contained in any minimum form agreement between the Society and the League.

Very truly yours,

SOCIETY OF STAGE DIRECTORS AND
 CHOREOGRAPHERS, INC.

(signed) ERWIN FELDMAN, Counsel

Plaintiff's Exhibit 2

THE LEAGUE OF NEW YORK THEATRES, INC.

and

SOCIETY OF STAGE DIRECTORS AND CHOREOGRAPHERS

COLLECTIVE BARGAINING AGREEMENT

This agreement is made as of the 13th day of August 1972, by and between The League of New York Theatres, Inc., hereinafter called the "League"; having its principal office at 226 West 47th Street, New York City, for and on behalf of itself and its present and future members, hereinafter called the "Producers," and the Society of Stage Directors and Choreographers, hereinafter called the "Society", having its principal office at 1501 Broadway New York City, for itself and on behalf of its present and future members.

In consideration of the mutual covenants and conditions herein contained, the parties hereto do hereby agree as follows:

1. The Producers recognize the Society as representative of its member Directors and Choreographers employed in connection with any first class theatrical production of the Producers performed in the United States.

(a) A first class theatrical production is a play (dramatic play, revue, musical or a combination thereof) presented on the speaking stage under a Producer's management in a first class theatre, in a first class manner with a first class cast. A first class theatrical production shall not include productions of the following type or nature:

(i) Vaudeville-type shows;

(ii) Concert-type shows of which VICTOR BERGE PRESENTS, AN EVENING WITH NICHOLS AND MAY, and AT THE DROP OF A HAT, are illustrative;

(iii) Readings of which Dorothy Stickney in THE LOVELY LIGHT, John Gielgud in AGES OF MAN and DON JUAN IN HELL are illustrative;

(iv) Night clubs and theatre restaurants, but Las Vegas shows will be considered "first class" where so classified by Actors Equity as part of a road tour;

(v) Foreign importations brought over substantially intact, where original direction was performed abroad. Rehearsal direction to meet conditions on the American stage, including the rehearsal of extras, shall not bring such productions within the coverage of this contract;

(vi) Ballets;

(vii) Symphonic and musical importations;

(viii) In addition to the foregoing, any production not under the jurisdiction of Actors Equity Association shall not be considered to be a first class theatrical production; and

(ix) If a person is hired and/or billed as a Director or Choreographer for a vaudeville-type show, a concert-type show or a reading as set forth above in subparagraphs (i), (ii) and (iii), such person shall be required to become a member of the Society as provided in paragraph 4 below and this agreement shall apply.

(b) In return for recognition of the Society granted by the Producers (i.e., present and future members of the League) in connection with first class theatrical productions of the Producers performed in the United States, the Society agrees that it will not attempt to seek recognition from and/or to bargain with the Producers, either individually or collectively, with respect to productions of the types listed in sub-paragraph (i) through (viii), above, except as set forth in the exception contained in sub-paragraph (ix). A theatrical production presented on the speaking stage in other than a first class theater shall not be covered by this contract.

2. The Society agrees to admit to membership on non-discriminatory terms any present or future employee of the Producers. Moreover, the Society will not invoke any Federal statute or other laws or take any other action to bar alien Directors from the United States and will admit alien Directors to membership on a non-discriminatory basis.

3. (a) The Society agrees that any initiation fee, or charge similar thereto, shall be reasonable and shall be uniformly required of all applicants and members.

(b) The Society shall be notified within 48 hours of the engagement of a director or choreographer.

(c) The Producer shall check-off dues and remit same to the Society, provided the Director and Choreographer has submitted a duly authorized dues deduction card.

4. The Producers agree that, as a condition of employment, any Director or Choreographer hired after the execution date of this agreement will be required to join the Society after the 30th day following his or her employment or the effective date of this agreement, whichever is later. This 30-day grace period applies to the initial engagement of a Director or Choreographer contracted for after the execution date or effective date of this agreement, whichever is later. Thereafter, with respect to succeeding engagements, Directors or Choreographers, as a condition of employment, shall be or become members of the Society when hired by a Producer; provided, however, that nothing in this paragraph shall be construed to require the Producer to cease employing or refrain from employing any such person if the Producer has reasonable grounds for believing that:

(a) Membership in the Society was not available to him on the same terms and conditions generally applicable to other members, or

(b) Membership in the Society was denied or terminated for reasons other than his failure to tender the periodic dues and the initiation fee uniformly required by the Society as a condition of acquiring or retaining membership.

The Society will establish such by-laws as will provide for honorable withdrawal and re-entry upon reasonable conditions. In no event will honorable withdrawal be conditioned on the payment by any individual of more than dues arrearages, not to include fines, and in no event will honorable re-entry be conditioned on the payment by any individual of a sum in excess of the initiation fee set forth in paragraph 3 of this contract.

5. It is agreed that this contract and its annexed schedules does not cover a Producer, not previously a member of the Society, when such a Producer is acting as a Producer-Director or a Producer-Choreographer. No such Producer-Director or Producer-Choreographer will be induced, coerced or otherwise required to become or remain a member of the Society. Any Producer-Director or Producer-Choreographer previously a member of the Society shall not qualify hereunder and shall remain a member of the Society pursuant to Paragraph 4 of this contract. A Producer is a person whose name is on the program as the presenter or co-presenter of the play and as a general partner of the producing partnership or as an officer of the producing corporation.

6. CONDITIONS OF EMPLOYMENT

(a) Attached hereto and made part of this agreement are the following schedules of minimum basic wage scales and working conditions:

SCHEDULE A - MINIMUM BASIC PROVISIONS FOR DIRECTORS
FIRST-CLASS PRODUCTIONS

SCHEDULE B - MINIMUM BASIC PROVISIONS FOR CHOREO-
GRAPHERS - FIRST-CLASS PRODUCTIONS

(b) The applicable provisions of this agreement and the provisions contained in the appropriate schedule shall be deemed incorporated in the individual contract of employment between each Producer and each Director or Choreographer. The Producer, Society, and the individual Director or Choreographer shall each be bound thereby.

(c) Anything contained in this agreement or the schedules attached hereto shall not be construed to prevent any Director or Choreographer from negotiating with and obtaining from any Producer any better terms and conditions than are provided for in this agreement without limitation.

(d) The Society will not enter into any contract with any person, firm or corporation, which contract provides more favorable terms than those contained in this collective bargaining agreement and its annexed schedules.

(e) The producer agrees that waiver by any Director or Choreographer or any of the terms of this agreement, including the appropriate schedule, shall not be requested of the Director or Choreographer or effective unless the consent of the Society is first obtained; provided, however, one reduction of royalties of not more than four weeks' duration, may be made without the consent of the Society, provided that an agreement, in writing, for such reduction be signed by the Producer and Director or Choreographer and filed with the Society within one week after the reduction is agreed upon.

Within the four week period the director consenting, the Producer may apply for the approval by the Society of an extension of the reduction. The Society must act upon this request within 24 hours of receipt. In the event the extension is not approved, the Producer may request arbitration before any one of the following arbitrators:

1. Benjamin Roberts
2. I. Robert Feinberg
3. Dean Maurice Benewitz
4. Daniel House
5. Professor Thomas Christensen
6. Norman Singer

A copy of the request for arbitration shall be served on the Director and the Society concurrently with the dispatch of the request to the arbitrator.

An arbitration hearing shall be held within twenty-four hours from the time the request is received by the arbitrator. A final and binding decision shall be issued immediately after the hearing.

In the event of the death or resignation of one or more of the arbitrators, the parties shall agree upon a successor or successors within 60 days. If the parties are unable to agree, said successor or successors shall be appointed by the American Arbitration Association.

(f) It is agreed that the direction of "musical numbers" is a usual part of the duties of a director and/or choreographer and that compensation for such direction is included in the minimum fee and royalty provisions of Schedule A and B annexed hereto.

7. PENSION and/or WELFARE CONTRIBUTIONS

(a) The parties agree to create a pension trust fund and a welfare trust fund for the purpose of providing

pension and welfare benefits to the members of the Society employed by the members of the League. Said trust funds shall be jointly administered and shall be established in accordance with all legal requirements.

(b) Commencing January 1, 1973 and for the term of this Agreement, the Producers shall contribute to said funds a total contribution of eight (8%) per cent of the minimum fee provided herein, as well as eight (8%) per cent per week on royalties based on a maximum of \$450 per week in royalties regardless of the number of companies of the production i.e., the \$450 maximum base upon which contributions shall be computed shall cover all companies of the production.

(c) In the event, the trust funds are not lawfully established by January 1, 1973, the parties shall open an escrow account into which the contributions shall be deposited.

8. NO STRIKE, NO LOCKOUT

The parties agree that during the term of this Agreement, the Producers shall not lock out any Director or Choreographer and the Society will not cause or permit any of its members to take part in any strike, work-stoppage, slowdown or concerted or organized curtailment of work (sympathetic, general, or any other kind) or any other interference with the operation of the Producer's business.

9. ARBITRATION OF DISPUTES

In the event any dispute concerning interpretation or application of this contract and/or its annexed schedules, together with any individually secured riders annexed thereto (hereinafter referred throughout this paragraph as "riders"), arises between the Society and the Producers or between a Director or Choreographer and a Producer, the parties agree that a prompt attempt will be made to settle the matter amicably.

(a) Whenever such a dispute arises, a representative of the Society and/or the Director or Choreographer and the representative of the Producer and/or Producers involved shall meet and endeavor to conciliate the dispute. These

meetings shall be held within the following periods: (1) Within ten (10) days after a play closes on its tryout. (2) Within ten (10) days after a play opens in New York. (3) If a play is touring within ten (10) weeks after the tour commences.

(b) In the event of a failure to settle a dispute concerning interpretation or application of this contract, and/or its annexed schedules including riders, the Society and/or a Director or Choreographer or the Producers, or a Producer, whoever may be the aggrieved party, or parties, shall deliver to the other party or parties a written statement of the grievance, which statement shall set forth the material facts of the contract breach or violation alleged. The other party or parties to the dispute may file a written reply if they so elect. The parties shall promptly attempt to agree upon an arbitrator. If the parties cannot do so within ten (10) days or within 24 hours in case of an alleged breach of the No-Strike, No-Lockout Clause, an arbitrator shall be appointed by the American Arbitration Association. The rules of procedure in such arbitration shall be the applicable rules as then currently published and in effect at the American Arbitration Association. All arbitration proceedings are to be conducted in the City of New York.

(c) The cost and expenses of the arbitration shall be shared equally by the Society and Producer or Producers involved.

(d) Where disputes are subject to arbitration under this section, they shall be settled by arbitration in accordance with the laws of the State of New York. Arbitration shall be the sole and exclusive remedy for disputes which arise under this contract and its schedules including riders.

(e) No claim on behalf of a Director or Choreographer, other than a claim for breach of contract requiring a money award, is within the jurisdiction of the arbitrator. The arbitrator shall not have the power to require a Producer or Producers to reinstate a Director or Choreographer who he finds to have been discharged in breach of this contract and/or its annexed schedules including riders, the remedy being limited solely to full payment for all compensation due under the Director's or the Choreographer's contract as same accrues. The arbitrator shall limit himself strictly to questions concerning interpretation and application of this contract and its schedules including riders and shall in no way alter, amend, modify, add to or subtract from any provisions of this contract and its annexed schedules including riders.

(f) The Producers recognize that nothing in this Paragraph shall be construed as prohibiting an individual Director or Choreographer to bargain on an individual basis with an individual Producer to secure arbitration provisions conferring jurisdiction and powers upon the arbitrator in excess of the jurisdiction and powers conferred upon the arbitrator herein.

(g) The Society of Stage Directors and Choreographers and The League of New York Theatres, Inc. shall have the right to participate in all arbitration proceedings.

The parties agreed to the following paragraphs 10 and 11 on August 13, 1962, and said paragraphs are made a part of this Agreement.

10. WAIVER OF BARGAINING OVER SUBSIDIARY RIGHTS

(a) The Society agrees that this contract and its annexed schedules do not vest in any Director or Choreographer the right to participate in any of the subsidiary rights of the dramatist ^{or} of Producer.

(b) The Society agrees to waive bargaining with respect to any and all subsidiary rights of the dramatist and/or Producers for a period of twenty years commencing August 13, 1962. The Society agrees that this waiver includes both direct and indirect attempts by it to secure such rights from the Producers and further agrees that this waiver will be adhered to in good faith. This waiver shall remain in effect after other provisions of this contract have expired, and regardless of any reopenings which may be provided for herein.

(c) These binding commitments are derived from the letter of Erwin Feldman, counsel for the Society, to Herman Shumlin, a representative of the League, dated March 16, 1962, which letter is annexed hereto.

(d) Subsidiary rights include, but are not limited to the following:

1. Stock and summer stock presentations;
2. Amateur presentations;
3. Musical comedy, operetta and grand opera based on a play;
4. Radio;
5. Television;
6. Second class touring rights;
7. Condensed and tabloid versions;
8. Concert tour versions;
9. Commercial uses;
10. Foreign language versions;
11. Original cast album of musical or straight plays;

12. Supper club or night club presentations;
13. Off-Broadway;
14. Fair presentations and ice shows;
15. Motion pictures;
16. English speaking rights around the world;
17. British rights;
18. Foreign rights;
19. Any mechanical or electronic devices whether now in existence or hereafter invented and/or put in use; and
20. Publishing rights.

(e) The Producers recognize that the provisions contained in this paragraph do not supersede the provisions of paragraph 6 (c) of this contract without limitation. The Producers covenant not to engage in a concerted effort to prevent individual directors or choreographers from negotiating with individual Producers with respect to subsidiary rights, and the Society covenants that no group of its members will engage in a concerted attempt to bargain with respect to those rights.

11. WAIVER AS TO EXISTING RELATIONS

(a) The Society agrees that this contract and its annexed schedules do not in any manner affect existing relations between Producer, Director, Choreographer and dramatist as practiced in the New York legitimate theatre in connection with the duty, authority, and control of any production.

(b) The Society agrees to waive bargaining with respect to the relations between Producer, Director, Choreographer and dramatist as practiced in the New York legitimate theatre in connection with the duty, authority, and control of any production. This waiver shall be for twenty (20) years commencing August 13, 1962. The Society agrees that this waiver includes both direct and indirect attempts by it to bargain with respect to the aforesaid relations and further agrees that it will adhere to this waiver in good faith. The waiver shall remain in effect after other provisions of the contract and its annexed schedules have expired and regardless of any openings which may be provided for herein.

(c) These binding commitments are derived from the letter of Erwin Feldman, counsel for the Society, to Herman Shumlin, a representative of the League, dated March 16, 1962, which letter is annexed hereto.

12. AUTHORIZATION FOR PUBLICATION OF STAGE DIRECTIONS AND CHOREOGRAPHY

The producer shall not authorize publication in any form of the stage directions of the director or the choreography of the choreographer. It is understood that this paragraph shall apply only to contracts signed after the effective date of this agreement.

13. OFF BROADWAY TO BROADWAY

In the event a production moves from Off Broadway to Broadway the director or choreographer shall receive the difference between the fee paid Off Broadway and the minimum Broadway fee.

14. DURATION AND APPLICABILITY

This agreement together with the schedules annexed hereto shall become effective on August 13, 1972 and remain in effect until August 12, 1976. Paragraphs 10 (a), (b),

(c), (d), and (e) (waiver of subsidiary rights), and 11 (a) and (b) (waiver as to existing relations), however, were entered into on August 13, 1962, to remain in full force and effect for a period of twenty years.

This agreement shall apply only to contracts executed after August 12, 1972.

19. REOPENINGS

Reopenings of this agreement shall be strictly limited to the following:

ELECTRONIC DEVICES - which visually reproduce and transmit on film tape, or live, the production from the stage or from a studio to viewers at home via paid or commercial television or any other means of remote reproduction, or to theatres where admission is charged, when that production remains substantially the same as originally directed with the original company.

When a production is reproduced as described above, the Director and the Choreographer shall receive the following: If the rights are sold or leased whether for a flat sum or percentage royalties, a sum proportionate to that received by the author based upon the original royalties paid to the author, the Director and the Choreographer respectively.

Should the parties be unable to reach an agreement regarding the subject of this paragraph, the matter shall be submitted to arbitration. If the parties cannot agree upon an arbitrator, an arbitrator shall be appointed by the American Arbitration Association. The rules and procedure in such arbitration shall be the applicable rules as then currently published and in effect at the American Arbitration Association. All arbitration proceedings are to be conducted in the City of New York. The cost and expenses of the arbitration shall be shared equally by the Society and the Producer or Producers involved. Arbitration shall be conducted in accordance with the laws of the State of New York. Decisions of the arbitrator shall be final and binding, but in no event shall his award exceed the maximum as set forth above.

16. COMPLETE AGREEMENT

The parties acknowledge that during the negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Producers and the Society, for the life of this agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to, or covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this agreement.

17. SEPARABILITY

It is not the intent of either party hereto to violate any laws or any rulings or regulations of any governmental authority or agency. The parties hereto agree that in the event any provisions of this agreement are held or constituted to be void or as being in contravention of any such laws, rulings or regulations,

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nevertheless, the remainder of the agreement shall remain in full force and effect unless the parts so found to be void are wholly separable from the remaining portions of this agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals this 13th day of August 1972.

THE LEAGUE OF NEW YORK THEATRES, INC.

By 

SOCIETY OF STAGE DIRECTORS AND
CHOREOGRAPHERS

By 

SCHEDULE AMINIMUM BASIC PROVISIONS FOR DIRECTORS
FIRST-CLASS PRODUCTIONS1. Representations Regarding the Engagement of a Director.

No Producer may make any representation regarding the engagement of a Director unless he has completed negotiations for an agreement for his services.

2. Fees, Royalties and Duration of Obligation.

(a) The minimum fee for the Director of a first-class production shall be no less than \$3000 effective August 13, 1972, \$3175 effective August 13, 1973, \$3350 effective August 13, 1974 and \$3500 effective August 13, 1975.

Twenty-five percent (25%) of the fee is to be paid directly to the Director on signing of the contract and is non-returnable. The balance of the fee is payable in three equal payments at the beginning of the first, second and third weeks of rehearsal or not later than one week before the first performance, whichever is shorter. If a production is abandoned, there shall be no liability for fee payments due the Director after the date of the abandonment. Those fees accrued to the Director prior to the abandonment may be retained by him and will be paid to him.

(b) In the event the Consumer Price Index for the City of New York increases by more than 5% from September 1, 1972 to September 1, 1973, the amount of the minimum fee effective August 13, 1973 shall be increased by the amount of the percentage in excess of 5%. For example, if the cost of living increases by 6% from September 1, 1972 to September 1, 1973, the \$3175 minimum fee will be increased by 1%.

No adjustment, however, will occur if the cost of living increases by 4.5%.

The same formula shall apply to the minimum fees

set forth above for 1974, and 1975.

Cost of living adjustments shall operate prospectively and will apply only to minimum basic contracts executed on or after the date of the adjustment. In no event shall these adjustments apply to contracts which provide fees in excess of the minimum. Each annual adjustment, if any, shall be applied to minimum fees as set forth in this agreement when executed. Cost of living adjustments shall not be pyramided.

(c) If a Producer has an unsatisfied judgment against him, because of non-payment to a Director or Choreographer, or has had such a judgment entered against him within twelve (12) months prior to the signing of the contract with the Director, the Society may require the Producer to post a bond for the seventy-five percent (75%) balance of the fee. If a production is abandoned, there shall be no liability on the bond for fee payments due after the date of the abandonment.

(d) In addition to the contract basic fee, the Director of a first-class dramatic production for the term of this agreement shall receive not less than one and one-half percent (1.5%) of the gross weekly box office receipts and the Director of a musical shall receive not less than three-quarters (3/4) of one percent (1%) of the gross weekly box office receipts, which weekly payment shall be payable no later than ten days after the week for which the weekly payments are due for the duration of the run of the play or musical.

(e) For purposes of calculating royalties, gross weekly box office receipts shall be the gross box office receipts as evidenced by the statements prepared and signed by the theatre and the producer after the following deductions:

1. All admission taxes levied by any governmental agency on gross receipts.
2. Pension and welfare deductions exercised as a result of the New York City tax abatement program.
3. Theatre party commissions and discounts, and cut rate sales.
4. Subscription fees.
5. Actors Fund benefits.
6. Any deductions similar to the ones listed above.

In bus or truck operations where a Producer receives a guaranteed lump sum, said sum less booking commission shall be the basis for the computation of royalties in lieu of gross box office receipts as defined above. Any sum received by the Producer in excess of the guaranteed lump sum shall also be included in computing royalties.

(f) The Director shall have the option to direct any and all companies presenting the play in the United States under the auspices of the Producer or for which the Producer or a partnership of which he is a general partner may license the production rights. In the event that the Director elects to direct such additional company or companies, he shall receive no less than one-half (1/2) of the original fee for each additional company directed by him in the United States and Canada. In addition, he shall receive no less than one and one-half percent (1.5%) of the gross weekly box office receipts for a drama and three-quarters (3/4%) of one percent (1%) of the gross weekly box office receipts for a musical. If the Director does not elect to exercise his

option, he will not receive any fee, but will receive no less than three-quarters percent ($3/4\%$) of the gross weekly box office receipts for a drama and three-eighths percent ($3/8\%$) of the gross weekly box office receipts for a musical. When the Director does not elect to direct such additional company or companies the person chosen by the Producer to reproduce the work shall not be covered by any provision of this schedule or the collective bargaining agreement to which it is annexed. The Producers agree that they will not attempt to induce such "person" to refrain from becoming a member of the Society and the Society agrees that it will in no way attempt to seek recognition for or bargain on behalf of such "person." The Director must make his election known to the Producer, in writing, within ten (10) days after receipt of written notice of said election from the Producer.

(g) A maximum of eight consecutive weeks in the case of a drama and ten consecutive weeks in the case of a musical after the first public performance out of town shall be the limit of the Director's obligation prior to the New York opening. The Director agrees that, in cases where additional time is required during the out-of-town tryout beyond this period, he shall continue to function as the Director, provided he is available and uncommitted by virtue of any other professional engagement.

(h) Should a production be suspended, because of strike, lockout, fire, flood, act of the public enemy or act of God, the period of the Suspension shall not be considered as part of the consecutive employment periods set forth in Paragraph 3 (f). The director agrees that in cases where a

suspension of production occurs prior to the date the production opens in New York, he shall continue to function as the Director, provided he is available and uncommitted by virtue of any other professional engagements contracted for prior to said suspension.

Should the production require additional directorial services to bring it to completion, and should the Director be unable to continue because of such a prior commitment, his royalty schedule shall be as follows:

1. Production not in rehearsal - no royalties
2. In rehearsal at least two weeks - 1/3 of royalties
3. After out-of-town opening - 2/3 of royalties

Fees received up to the time of the suspension may be retained should a Director be prevented from continuing as set forth above.

3. Per Diem Expenses

Out-of-town expenses are to be paid to the Director at the rate of not less than \$30.00 per diem. If a Producer has an unsatisfied judgment against him, because of non-payment to a Director or Choreographer, or has had such a judgment entered against him within twelve (12) months prior to the signing of the contract with the Director, the Society may require the Producer to post a bond for Three Hundred Fifty Dollars (\$350.00). If a production is abandoned, there shall be no liability on the bond, or otherwise, for per diem expenses after the date of the abandonment.

4. Billing

- (a) With respect to each company directed by the

Director, he shall receive billing in all programs and house-boards.

(b) Such credit shall appear on a separate line in an agreed size and type and position on which no other credit shall appear.

5. No Director may be dismissed, except where the Director is guilty of breach of contract, without the full payment for all compensation due him under the contract as same accrues.

6. Collection of Royalties by the Society

The Society, at the option of the Director, shall also receive, collect and disburse to the members all weekly royalty payments due under such agreements and receive, investigate and approve producers' statements reflecting accuracy of such royalty payments.

7. (a) The Director agrees to supervise and maintain the quality of the production; and, in furtherance thereof he is required to see a complete performance of a production that he has directed at least once every eight (8) weeks, unless the Director's contractual obligations prevent him or her from doing so, in which case the Director shall see the show as soon as his or her contractual obligations permit. After seeing a complete performance of the production, the Director shall redirect it, without any additional compensation, if he and/or the Producer deem it necessary to do so. In the event the Director is required to redirect and if at the time such redirection is desired, the Director is not at the location where the Company is performing, the Producer shall pay, as set forth in his contract, his round-trip airfare and per diem, if necessary, for the length of the time required to redirect the production.

(b) Should the Director fail to comply with the requirements set forth in Paragraph (a), the Director shall forfeit one-half (1/2) of his or her royalties until Paragraph 7 (a) is complied with at which time full royalty payments shall be resumed.

SCHEDULE BMINIMUM BASIC PROVISIONS FOR CHOREOGRAPHERSFIRST-CLASS PRODUCTIONS1. Representations Regarding the Engagement of a Choreographer

No Producer may make any representation regarding the engagement of a Choreographer unless he has completed negotiations for an agreement for his services.

2. Fees, Royalties and Duration of Obligation

(a) The minimum fee for the Choreographer of a first-class production shall be not less than \$2225 effective August 13, 1972, \$2350 effective August 13, 1973, \$2450 effective August 13, 1974, and \$2550 effective August 13, 1975.

Twenty-five percent (25%) of the fee is to be paid directly to the Choreographer upon signing of the contract, and the balance is payable in three equal payments at the beginning of the first, second and third weeks of rehearsal, or not later than one week before the first performance, whichever period is shorter. If a production is abandoned, there shall be no liability for fee payments due the Director after the date of the abandonment. Those fees accrued to the Director prior to the abandonment may be retained by him and will be paid to him.

(b) In the event the Consumer Price Index for the City of New York increases by more than 5% from September 1, 1972 to September 1, 1973, the amount of the minimum fee effective August 13, 1973 shall be increased by the amount of the percentage in excess of 5%. For example, if the cost of living increases by 6% from September 1, 1972 to

September 1, 1973, the \$2350 minimum fee will be increased by 1%.

No adjustment, however, will occur if the cost of living increases by 4.5%.

The same formula shall apply to the minimum fees set forth above for 1974, and 1975.

Cost of living adjustments shall operate prospectively and will apply only to minimum basic contracts executed on or after the date of the adjustment. In no event shall these adjustments apply to contracts which provide fees in excess of the minimum. Each annual adjustment, if any, shall be applied to minimum fees as set forth in this agreement when executed. Cost of living adjustments shall not be pyramided.

(c) If a Producer has an unsatisfied judgment against him, because of non-payment to a Director or Choreographer, or had such a judgment against him within twelve (12) months prior to the signing of the contract with the Choreographer, the Society may require that the Producer post a bond for the seventy-five percent (75%) balance of the fee. If a production is abandoned, there shall be no liability on the bond, for fee payments due after the date of the abandonment.

(d) In addition to the contract basic fee, the Choreographer of a first-class production for the term of this agreement shall receive not less than one-half (1/2) of one percent (1%) of the gross weekly box office receipts, which weekly payments shall be payable no later than ten days after the week for which the weekly payments are due.

(e) For purposes of calculating royalties, gross weekly box office receipts shall be the gross box office receipts as evidenced by the statements prepared and signed by the theatre and the Producer after the following deductions:

1. All admission taxes levied by any governmental agency on gross receipts.
2. Pension and welfare deductions exercised as a result of the New York City tax abatement program.
3. Theatre party commissions and discounts, and cut rate sales.
4. Subscription fees.
5. Actors Fund benefits.
6. Any deductions similar to the ones listed above.

In bus or truck operations where a Producer receives a guaranteed lump sum, said sum less booking commission shall be the basis for the computation of royalties in lieu of gross box office receipts as defined above. Any sum received by the Producer in excess of the guaranteed lump sum shall also be included in computing royalties.

(f) The Choreographer shall have the option to choreograph any and all companies presenting the play in the United States and Canada under the auspices of the Producer or for which the Producer or a partnership of which he is a general partner may license the production rights. In the event that the Choreographer elects to choreograph such additional company or companies, he shall receive one-half (1/2) of the original fee for each additional company choreographed by him in the United States and Canada. In addition, he shall receive no less than one-half (1/2) of one percent (1%) of the gross weekly box office receipts.

In the event that for any reason whatsoever the Choreographer does not elect to choreograph such additional company or companies, the Producer shall be free to select the person for such additional company or companies. When the Choreographer does not elect to choreograph such additional company or companies the person chosen by the Producer to reproduce the work shall not be covered by any provision of this schedule or the collective bargaining agreement to which it is annexed. The Producers agree that they will not attempt to induce such "person" to refrain from becoming a member of the Society and the Society agrees that it will in no way attempt to seek recognition for or bargain on behalf of such "person." If the Choreographer does not elect to exercise his option, he will not receive any fee, but will receive no less than one-fourth (1/4) of one percent (1%) of the gross weekly box office receipts derived from any and all such companies. The Choreographer must make his election known to the Producer, in writing, within ten (10) days after receipt of written notice of said election from the Producer.

(g) A maximum of ten consecutive weeks after the first public performance out of town shall be the limit of the Choreographer's obligation prior to the New York opening. The Choreographer agrees that, in cases where additional time is required during the out-of-town tryout, beyond this period, he shall continue to function as the Choreographer, provided he is available and uncommitted by virtue of any other professional engagement.

(h) Should a production be suspended, because of strike, lockout, fire, flood, act of public enemy or act of God, the period of the suspension shall not be considered as part of the consecutive employment periods set forth in Paragraph 3 (f). The Choreographer agrees that in cases where a suspension of production occurs prior to the date the production opens in New York, he shall continue to function as the Choreographer, provided he is available and uncommitted by virtue of any other professional engagements contracted for prior to said suspension.

Should the production require additional choreographical services to bring it to completion, and should the Choreographer be unable to continue because of such a prior commitment, his royalty schedule shall be as follows:

1. Production not in rehearsal - no royalties
2. In rehearsal at least two weeks - 1/3 of royalties
3. After out-of-town opening - 2/3 of royalties

Fees received up to the time of the suspension may be retained should a Choreographer be prevented from continuing as set forth above.

3. Per Diem Expenses

Out-of-town expenses are to be paid to the Choreographer at the rate of not less than Thirty Dollars (\$30.00) per diem. If a Producer has an unsatisfied judgment against him, because of non-payment to a Director or Choreographer, or has had such a judgment entered against him within twelve (12) months prior to the signing of the contract

with the Choreographer, the Society may require the Producer to post a bond for Three Hundred and Fifty Dollars (\$350.00). If a production is abandoned, there shall be no liability on the bond, or otherwise, for per diem expenses after the date of the abandonment.

4. Billing

With respect to each company choreographed by the Choreographer, he shall receive billing in all programs and houseboards.

5. The Choreographer shall have an assistant of his choice during the entire rehearsal and during part or all of the out-of-town tryout period. The duration of the assistant's employment and the compensation he shall receive shall be negotiated between the assistant and the Producer. The assistant shall not be covered by the provisions of this Schedule or by the Collective Bargaining Agreement to which this Schedule is annexed. It shall not be deemed a breach of this contract if the Choreographer waives this requirement in regard to the engagement of an assistant when such a waiver is negotiated by the Choreographer and the Producer. Notice need not have been given to the Society. The Choreographer shall have the right to designate a captain or replacement among the dance company, who, after the show has opened in New York, shall have the authority to call the necessary rehearsals and rehearse understudies and replacements to maintain the quality of dancers' performances. The duration of the dance captain's employment and the compensation he shall receive shall be negotiated between the dance captain and the Producer. The captain shall not be covered by the provisions of this Schedule or by the Collective Bargaining

Agreement to which this Schedule is annexed. In addition, the Choreographer shall have the right to designate a replacement for the captain on the same terms and conditions as stated above, provided, however, that the Choreographer is readily available to make such designation.

6. The choreography shall not be changed or altered or deleted after the New York opening without first consulting with the Choreographer.

7. The Choreographer shall select or approve a dance rehearsal pianist who will be at the Choreographer's disposal for the rehearsal, road and tour period. The duration of the rehearsal pianist's employment and the compensation he shall receive shall be negotiated between the pianist and the Producer. The pianist shall not be covered by the provisions of this Schedule or by the Collective Bargaining agreement to which this Schedule is annexed. The Choreographer shall have first call on the services of the pianist. However, when not occupied with dance routines, the pianist shall be available to the rest of the company.

8. Maintaining the Quality of a Production

(a) The Choreographer is required to see a complete performance of a production he has choreographed at least every eight (8) weeks unless the Choreographer's contractual obligations prevent him or her from doing so, in which case the Choreographer shall see the show as soon as his or her contractual obligations permit. After seeing a complete performance of the production, the Choreographer shall rehearse it, without any additional compensation, if he and/or the Producer deem it necessary to do so. In the event the Choreographer is required to rehearse and if at the time such rehearsal is desired, the Choreographer is not at the location where the Company is performing, the Producer shall pay, as set forth in his contract, his round-trip airfare and per diem, if necessary, for the length of the time required to rehearse the production.

(b) Should the Choreographer fail to comply with the requirements set forth in Paragraph 8 (a), the Choreographer shall forfeit one-half of his or her royalties until Paragraph 8 (a) is complied with at which time full royalty payments shall be resumed.

9. No Choreographer may be dismissed, except where the Choreographer is guilty of breach of contract, without full payment for all compensation due him under the contract as same accrues.

10. Collection of Royalties by the Society

The Society, at the option of the Choreographer, shall also receive, collect, and disburse to the members all weekly royalty payments due under such agreements and receive, investigate and approve producers' statements reflecting accuracy of such royalty payments.

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SOCIETY OF STAGE DIRECTORS & CHOREOGRAPHERS, INC.
140 West 55th Street
New York 19, New York

March 16, 1962

Mr. Herman Shumlin
11 East 48th Street
New York City

Dear Herman:

This will confirm the action which was unanimously ratified at the general membership meeting of the Society last Wednesday evening. The Society accepted the proposals on the points which we discussed, which were as follows:

1. That the Society will not in any contract which may result from negotiations between the League and the Society and any renewal of such contract, for a period of no less than twenty years, demand as a condition to be included in any such negotiated minimum basic agreement.

(a) Any provision which would give to any director or choreographer participation in any of the subsidiary rights of the dramatists and/or producers.

(b) Any condition which would change the present relations between producer, director and dramatist as practiced in the New York legitimate theatre in connection with the duty, authority and control of any production.

2. That for membership in the Society, the Constitution and By-Laws will provide that no initiation fee will exceed \$100.

It is, of course, understood that the provisions of par. 1. shall in no way be construed to prevent any director or choreographer from negotiating with and obtaining from any producer, better terms without limitation, than are contained in any minimum form agreement between the Society and the League.

Very truly yours,

SOCIETY OF STAGE DIRECTORS AND
CHOREOGRAPHERS, INC.

(signed) ERWIN FELDMAN, Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Plaintiff's Exhibit 3

-----X
JAY JULIEN,

Plaintiff, :

-against- :

SOCIETY OF STAGE DIRECTORS AND :
CHOREOGRAPHERS, INC., :

Defendant. :

CIVIL ACTION
No. 5120/68

-----X
Plaintiff and defendant hereby agree as to the following findings
of fact:

1. Plaintiff is a producer of first class stage productions.
(Whenever used herein, a "Production" will mean a first class theatrical production; a "Producer" will mean a producer of Productions; and a "Director" will mean a director of Productions.)
2. Defendant is an organization of Directors and choreographers.
3. Defendant entered into an agreement dated August 13, 1962 ("Basic Agreement") with The League of New York Theatres, Inc. which set terms under which Directors would perform their services throughout the United States.
4. Defendant entered into an agreement dated August 13, 1972 ("Renewed Basic Agreement") amending and extending the Basic Agreement. (The Basic Agreement and the Renewed Basic Agreement are sometimes referred to collectively as the "Agreements".)
5. The Agreements provide, inter alia, for minimum fees and other minimum terms under which a Director will perform his services, for compulsory arbitration, and that any Director engaged by a Producer must be or become a member of defendant.
6. The Agreements are industry wide agreements, apply throughout the United States, apply to Productions in inter-state commerce, and con-

trol minimum terms under which a Director will perform his services.

7. The entire industry of Productions in the United States is and has been for the last ten years subject to the provisions of the Agreements.

8. During the last ten years, substantially all Productions in the United States have been directed by members of defendant and have been subject to the terms of the Agreements, excepting Productions in which the Producer and Director were the same person.

9. Directing is a highly skilled, creative profession requiring talent for competent performance.

10. Directors generally complete each engagement as follows:

(a) The average preparation prior to rehearsal is about four weeks to six months (but may be as long as two years);

(b) Rehearsals in about four to five weeks;

(c) Try-out period in one to five weeks;

(d) Periodic checkups during run of play for brush up rehearsals and cast replacement, but only if and when the Director is not otherwise professionally engaged.

(e) During the period of preparation, a Director is permitted to and frequently does work on other Productions or other endeavors.

11. If a Producer discharges a Director without cause, the Director is entitled to his full compensation. If a Director is discharged for cause, he is not entitled to the compensation that would have accrued had he not been discharged.

12. A Producer may, at will, dismiss a Director without cause, but in such event must pay the Director the full fee and royalties that the Director would have received had he not been dismissed.

13. In approximately 1968, defendant claimed that plaintiff was

in violation of the Basic Agreement and called for arbitration of the claim: plaintiff was unsuccessful in an attempt to stay arbitration, and the "arbitration hearing" was then conducted without any participation therein by plaintiff, whereupon the "arbitrator" ruled that plaintiff was in violation of the Basic Agreement. Defendant thereupon placed plaintiff on its unfair list, and prohibited its members from performing services for plaintiff.

14. (a) Plaintiff is a member of The League of New York Theatres, Inc.

(b) In or about April 30, 1965, plaintiff entered into an agreement with Reginald Denham, a member of the defendant, providing for the performance by Denham as a director of a play entitled "The Hostile Witness". Thereafter, a dispute arose between Denham and plaintiff and in accordance with the provisions of the collective bargaining agreement between defendant and The League of New York Theatres, Inc. the matter was submitted for determination to the American Arbitration Association. Plaintiff attempted to stay the arbitration through application to the Supreme Court, New York County, the Appellate Division, First Department, and the New York State Court of Appeals. Each of the applications was denied. Thereafter, plaintiff refused to participate in the arbitration and an award of \$4,000.00 was granted against plaintiff and in favor of Denham.

PHILIP J. KASSEL
Attorney for Plaintiff
Office & Post Office Address
25 West 45th Street
New York, New York 10036
PLaza 7-3760

Traube

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Q If I state facts and you agree or you disagree, you will say so.

A Okay.

Q I am trying to ascertain what the policy is of the Society with reference to when they will claim whether it is before an arbitrator or at any one time whether they will claim whether a producer is permitted to fire a director without having to pay him and when they will not make that claim.

A Yes, there is a policy.

Q There is a policy?

A There is a contract, legal in New York City, that defines the circumstances. If a director has breached his contract for cause and I have cited some instances such as drunken behavior or failure to come to rehearsals, disinterest in the project --whatever --obviously the producer is entitled to fire him for breach of contract. But if he is firing him for disagreement on interpretation of the play or what he regards as the quality of the staging of the play, the Society's position is he may dismiss that director but he must pay him for the full time and may employ as many directors as he wishes as long as he wishes to pay each director.

Q So when you stated before that a producer makes

Traube

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1 the ultimate determination as to the interpretation of a
2 play or as to when to rehearse you are stating that if a
3 director does not agree with him, he can dismiss the
4 director but he must pay him the contract in full. I am re-
5 stating what you said. Is that correct?
6

7 A The actual practice of the profession is that
8 producers and directors and authors and actors are all
9 reasonable people and in the stress of a rehearsal period
10 try to adjust their differences and come to some sophisti-
11 cated, adult conclusions as to how to proceed. If they
12 reach an impasse the producer is the man who employs every-
13 body connected with that production, who is responsible ^{AS} ~~to~~
14 the general partner in most instances for the contribution
15 of monies that he has raised from the general public.

16 Q I am directing ourselves to one very narrow point
17 now and that is when a director refuses to follow the in-
18 structions of a producer in one of these areas that we have
19 discussed such as interpretation of a play or the rehearsal
20 of an actor. You have stated that the producer may dis-
21 miss him, but you have also stated that he must nevertheless
22 pay him as though he had not dismissed him. Is that correct?

23 A That is my understanding.

24 Q If the director violates a term of the contract
25 and if you, on behalf of the Society, agree that the director

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has violated a term of the contract, then if he is dismissed he would not have to be paid?

A Fired for breach of contract -- for cause.

Q So when the director refuses to follow the instructions with reference to either interpretation or rehearsal, he is not in violation of his contract as the Society sees it, is that correct?

A That's correct.

Q Would that same principle apply, not only to the question as to which actor is to be rehearsed and the interpretation of the play -- and I will give you a list of the items: what hours of rehearsal there should be---

MR. GREGORY: Wait a minute. Mr. Traube, is there any instance in the history of the Society where this has occurred where a director was dismissed because there was a dispute between a director and a producer as to hours?

THE WITNESS: I have never heard of one.

MR. GREGORY: It is a hypothetical question.

Q Does the Society have a policy on that?

MR. GREGORY: Has it ever taken a position on it?

THE WITNESS: No.

Q Does this same principle, the principle that we

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Defendant's Exhibit A

AGREEMENT made this 3rd day of June

1969 by and between MARTIN FRIED PRODUCTIONS, INC.
CORPORATION

("PRODUCER") and JAY JULIAN

("DIRECTOR") in connection with the full length

stage play by MICHAEL GAZZO

now entitled "DEATH OF THE FETTERED TIGER IN OUR FAIR CITY"

("PLAY").

The parties do hereby agree as follows:

1. ENGAGEMENT:

corporation which shall furnish
the services of Martin Fried

PRODUCER hereby engages/DIRECTOR as the
sole and exclusive director of the PLAY and DIRECTOR
hereby accepts such engagement upon all of the terms and
conditions herein set forth.

2. TERM OF EXCLUSIVE SERVICES:

DIRECTOR's exclusive directorial services
shall commence on the first day of rehearsals, which shall be
between June 3, 1969 and Dec. 3, 1969 or within
fourteen (14) days thereafter. His commencement of
rehearsals at such time shall be of the essence of this
agreement.

PRODUCER shall give DIRECTOR not less
than thirty (30) days prior written notice of the exact
rehearsal commencement date.

DIRECTOR's exclusive services shall be
rendered during the period commencing with the first
rehearsal of the PLAY and ending with the official opening
of the PLAY in New York City. In no event shall
DIRECTOR be obligated to render any services hereunder for
a period in excess of eight (8) consecutive weeks.

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3. NATURE OF SERVICES:

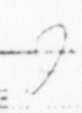
DIRECTOR shall render all services customarily rendered by the director of a first class stage production, including the supervising and conducting of rehearsals, attending and supervising pre-Broadway performances of the PLAY, whether outside of New York City or in New York City, and attending the official opening of the PLAY in New York City. DIRECTOR shall also attend conferences, consult with author, and make suggestions with regard to casting and other production problems. In no event, however, shall DIRECTOR be required to render any services after the expiration of the eight (8) week period set forth in Paragraph 2 hereof.

4. APPROVALS:

DIRECTOR shall have prior approval of the following elements of all companies of the PLAY directed by him hereunder: cast, replacements in the cast (whether same be made prior or subsequent to the official opening of the PLAY); ~~circumstances~~; scenic, costume and lighting designers; and any music to be used for the PLAY.*

DIRECTOR's failure to communicate his disapproval of any of the foregoing elements within seventy-two (72) hours after a request for approval has been made shall be deemed approval.

* Director's approval of designers and music shall not be unreasonably withheld.

INITIAL HERE 

5. MINIMUM REHEARSAL PERIOD:

The PLAY shall be rehearsed for not less than three (3) consecutive weeks prior to the first public performance.

6. CHANGES IN STAGING:

DIRECTOR agrees that he will give due consideration to any reasonable requests made by PRODUCER for changes in the staging or performance of any company of the PLAY directed by DIRECTOR, but no changes shall be made in the staging or performance of any such company at any time without DIRECTOR's prior consent (which shall not be unreasonably withheld), and DIRECTOR, if available, shall be accorded the first opportunity to make such changes.

PRODUCER will endeavor to hold requests for such changes to a minimum and in any case such requests shall be reasonable and for a specific purpose.

7. SERVICES AFTER OPENING:

After the opening of the PLAY in New York City, DIRECTOR, subject to his availability** will check performances of the PLAY from time to time and direct rehearsals and cast replacements to the extent necessary to maintain the quality of the PLAY without additional compensation therefore***. Under no circumstances shall any failure to render services under this Paragraph constitute or be deemed a breach of this Agreement.

*professional

**and/or physical disability

***to corporation or director

8. TRANSPORTATION AND LIVING EXPENSES:

In the event DIRECTOR's services in connection with any company of the PLAY that he directs hereunder are required by PRODUCER to be rendered at any place outside of New York City, PRODUCER shall pay for and furnish DIRECTOR with first class, roundtrip transportation between New York City and such place or places, plus the sum of THIRTY-FIVE (\$35.00) DOLLARS per day (to defray the cost of DIRECTOR's living expenses) for each day that DIRECTOR is required to be away from New York City for such purpose.

In the event DIRECTOR renders services hereunder in connection with any British Isles production of the PLAY, DIRECTOR agrees to accept jet economy air transportation in lieu of first-class transportation.

9. HOUSE SEATS:

For each and every performance of the PLAY, including tryouts and previews, PRODUCER shall cause four (4) consecutive orchestra seats (two (2) consecutive orchestra seats with respect to benefits and subscription performances) within the first ten (10) rows of the center section to be held for purchase by DIRECTOR, or his designee, at the regular box office prices. For evening performances, such tickets shall be held until 6:00 PM of the day preceding evening performances, and for matinee performances until 12:00 Noon of the day preceding the matinee performance.

In addition to the foregoing, PRODUCER shall make available to DIRECTOR, or his designee, for purchase at regular box office prices, five (5) pairs of orchestra seats in the center section for the official opening of the PLAY in New York City.

10. BILLING:

DIRECTOR shall receive billing whenever and wherever the title of the PLAY appears including, but not limited to, all forms of paid advertising and paid publicity, programs, houseboards, billboards, newspapers, displays and posters in the following form:

DIRECTED BY MARTIN FRIED

DIRECTOR's name shall appear on a separate line and shall follow immediately after the title of the PLAY or the name of the author, as PRODUCER shall determine. DIRECTOR's first and last name shall be not less than fifty (50%) percent* of the size of the largest letter used for the title of the PLAY or the names of the stars, whichever is larger.

No names, except for the names of the stars, the name of the author, the names of the featured players and the PRODUCER's name, shall be as large as DIRECTOR's name. No names, other than the names of the stars, ^{or featured players} shall be larger than DIRECTOR's name.

*BUT in no event less than billing for Michael Gazzo

The foregoing notwithstanding, in "ABC" and "DEF" advertisements, DIRECTOR's name need not appear. Only elements which appear therein are the names of the stars, the title of the PLAY and the name of the producer.

The foregoing requirements with respect to size and position of DIRECTOR's billing shall not be applicable with respect to the use of extracts from critics' reviews, i.e., names of any persons associated with the production which are used in the context of quotations from critics' reviews, may appear in such position and size as the PRODUCER in his discretion shall determine.

DIRECTOR shall be accorded the aforementioned rights with respect to every production of the PLAY in which he shall direct.

In connection with all productions of the PLAY in which DIRECTOR elects not to direct, pursuant to his right of election under Paragraph 12 hereof, DIRECTOR shall not receive billing, unless waived by DIRECTOR,

10-11-47

wherever the director of any such production receives
billing, as follows: .

"ORIGINAL NEW YORK PRODUCTION DIRECTED BY MARTIN FRIED"

DIRECTOR's name shall appear in size of
type and prominence not less than that accorded to
such new director.

INITIAL HERE

11. COMPENSATION:

of furnishing
In consideration of the DIRECTOR'S services to
the PLAY, PRODUCER
shall pay to the DIRECTOR and the DIRECTOR agrees to accept,
the following:

A. The sum of three thousand (\$3,000.00)
DOLLARS, payable as follows: fifteen hundred (\$1500)
DOLLARS upon execution of this Agreement and five hundred
(\$500) DOLLARS at the beginning of each of the first three
(3) weeks of rehearsal, but in any event said total sum of
three thousand (\$3,000) DOLLARS shall be paid to corporation
prior to first paid public performance of the PLAY.

*Corporation

B. Commencing with the first paid public performance of the PLAY a sum, payable weekly, equal to Two (2%) percent of all gross weekly box office receipts derived from all performances of the original production of the PLAY (regardless of cast changes) including tours, if any, before or after the New York City opening of the PLAY. The above royalty shall automatically be increased to two and one-half (2½) Percent after recoupment of costs.

~~1. COMMENCING WITH THE FIRST PAID PUBLIC PERFORMANCE OF THE PLAY~~ ~~PRODUCER'S FAILURE TO ACTUALLY COMMENCE~~ rehearsals at the time specified in Paragraph 2 hereof, or the abandonment or termination of the PLAY at any time and for any reason whatsoever shall not discharge PRODUCER from its obligation to make all payments to DIRECTOR in full of all amounts due under this Section Eleven A and B specified herein.

12. ADDITIONAL COMPANIES:

(a) If any one or more first-class companies or stage productions of the PLAY, or special touring versions, or so-called "bus and truck" tours of the PLAY, other than the original New York City production of the PLAY, is produced in the United States, Canada or Great Britain, wholly or partly under the PRODUCER's ownership, management or authority, or under assignment or lease of rights from PRODUCER, or from any company licensed by PRODUCER, DIRECTOR shall be given the first opportunity to direct same; and if ^{CORPORATION} elects to direct any such production, PRODUCER shall pay or cause to be paid to ^{CORPORATION} the following:

(1) The sum of One Thousand Five Hundred (\$1,500) DOLLARS for each such production, payable as follows: Upon notification by Corporation of its intention to furnish Director's services to direct the additional company.

*except that CORPORATION'S first option to furnish the Director for the English production of the PLAY shall be subject to the prior approval of a British producer, if any.

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(11) Commencing with the first paid public performance of each such production, a sum, payable weekly, equal to Two (2%) percent of all gross weekly box office receipts derived from all performances of each such production (regardless of cast changes). Such royalty shall be automatically increased to Two and One-half (2½) Percent after recoupment of costs.

CORPORATION furnish
(b) If CORPORATION shall decline to/director for any such additional production referred to in the preceding paragraph, PRODUCER shall, nevertheless, pay or cause to be paid to CORPORATION a sum, payable weekly, equal to One and one-half (1½) percent of all gross weekly box office receipts or "Company's Receipts" (whichever shall be applicable), of any such production. However, the fee specified in 12(a) (1) shall not be paid. *because of his unavailability due to other professional engagements

(c) PRODUCER shall give CORPORATION not less than sixty (60) days' prior written notice of each such additional production, which notice shall specify the rehearsal commencement date. Within ten (10) days after receipt of such notice, CORPORATION shall notify PRODUCER whether or not he elects to direct such production. *CORPORATION's failure to give PRODUCER such notice shall be deemed a declination and, in such event, CORPORATION's right of election with respect to the particular production shall forthwith terminate and PRODUCER shall be free to employ another director for such company. Any declination by CORPORATION shall not affect CORPORATION's right to direct any other additional company of the PLAY, and PRODUCER shall give to CORPORATION first opportunity to direct same as in this paragraph provided.

(b2) If CORPORATION shall decline to direct any such additional production referred to in the preceding paragraph, PRODUCER shall, nevertheless, pay or cause to be paid to CORPORATION a sum, payable weekly, equal to One (1%) Percent of all gross weekly box office receipts or "Company's Receipts" (whichever shall be applicable), of any such production. However, the fee specified in 12 (a) (1) shall not be paid.

*CORPORATION

INITIAL HERE: _____

(d) Any first-class company which presents performances of the PLAY in the United States, Canada or Great Britain during the existence of the PRODUCER's production rights under the PRODUCER's contract with the authors of the PLAY, regardless of whether the production rights for such company are licensed by the author, shall be deemed, without limitation, to be a company as to which the foregoing provisions of this Paragraph 12 shall apply.

With respect to any so-called "guaranteed" or "fixed fee" bookings, Royalties shall be computed on the "Company's Receipts" in lieu of gross weekly box office receipts, if the Author's royalties are so computed. The term "Company's Receipts" shall be deemed to include all receipts derived by PRODUCER from such guaranteed or fixed fee bookings and the "Company's Share" of any percentages in excess of any guarantee or fixed fee without deduction of any kind.

PRODUCER agrees that it shall not enter into any so-called "guaranteed" or "fixed fee" bookings with any theatre which customarily presents first class stage attractions.

In the event the cast which is appearing in the PLAY in New York City goes on tour and the PLAY continues to be presented in New York City with a replacement cast, such replacement cast shall be deemed an additional company of the PLAY and shall have the right to direct same and be compensated therefor, all in accordance with the provisions of this Paragraph 12.

* (subject to British Producer's approval mentioned in sub-paragraph (a) of this Paragraph 12.)

** CORPORATION

INITIAL HERE

13. REMITTANCE OF PAYMENTS:

All payments to ^{CORPORATION} hereunder shall be made to and in the name of ASHLEY FAMOUS AGENCY, INC. and remitted to said agent at 1301 Avenue of the Americas, New York, New York 10019, and marked to the attention of:

Shirley Bernstein

Percentage payments shall be remitted as follows:

(a) With respect to performances given in the United States and/or Canada, not later than five (5) days following the end of the performance week for which applicable;

(b) With respect to performances given outside of the United States and/or Canada, not later than fourteen (14) days following the end of the performance week for which applicable.

All percentage payments shall be accompanied by the box office statement referred to in Paragraph 16 hereof.

INITIAL HERE

14. AGENCY CLAUSE:

*[] hereby irrevocably appoints Ashley Famous Agency, Inc. as [] sole and exclusive agent with respect to the engagement contemplated by this agreement, and authorizes and directs PRODUCER to make all payments due or to become due to [] hereunder to and in the name of said agent, and to accept the receipt of said agent as full evidence and satisfaction of said payments. In consideration of services rendered and to be rendered by said agent, * [] hereby agrees that Ashley Famous Agency, Inc. is entitled to receive and retain as its commission TEN (10%) PERCENT of all such monies. It is understood and agreed between the parties hereto that the provisions of this paragraph are specifically included for the benefit of Ashley Famous Agency, Inc., which is hereby deemed a third party beneficiary.

*CORPORATION

INITIAL HERE

15. DEFINITIONS:

For the purposes of this agreement, the following terms shall be deemed to have the following meanings:

GROSS WEEKLY BOX OFFICE RECEIPTS:

Subject to the approval of the Dramatists Guild, Gross Weekly Box Office Receipts, as used in Section 9 of the Schedule of Additional Production Terms and elsewhere in this Contract, shall be deemed to mean all receipts from all sources whatsoever derived from the sale of tickets to the Play after the deduction of only the following:

With respect to the United States and Canada:

- (i) Federal admissions taxes;
- (ii) Commissions paid in connection with theatre parties or benefits;
- (iii) Those sums approximately equivalent to the former 5% New York City Amusement Tax, the net proceeds of which are actually paid over to the pension and welfare funds of the various theatrical unions.

With respect to the British Isles:

- (i) Library discount, if any;
- (ii) Entertainment taxes.

PRODUCTION COSTS:

The definition of "production costs" contained in the financing agreement executed with the investors in the PLAY shall be deemed applicable to this agreement, provided, however, that such definition is no less favorable to [redacted] than the definition set forth in the so-called "Approved Form of Theatrical Limited Partnership Agreement" (in which event such latter definition shall apply). In any event, there shall be expressly excluded from such production costs the amount of any bonds, sinking funds, or any other recoverable items.

*CORPORATION

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RECOUPMENT OF PRODUCTION COSTS:

In determining whether production costs have been "recouped", there shall be taken into account as income to PRODUCER all sums derived directly or indirectly from the production and presentation of the PLAY, including not only income from all first-class performances and other activities controlled by PRODUCER (such as the sale of souvenir programs) but also, and without limiting the generality of the foregoing, any share of net receipts due or to become due to PRODUCER in connection with the exploitation or other disposition of any subsidiary rights in and to the PLAY in which PRODUCER is entitled to participate pursuant to its contract with the authors of the PLAY, although such share of net receipts is not actually paid ~~until some future date~~ to PRODUCER until some future date.

It is expressly understood that the earliest date of recoupment shall be the date on which the production costs of the PLAY (as such term is defined above) have been recovered, regardless of whether the investors have been repaid their respective investments.

NET PROFITS:

The definition of "net profits" contained in the financing agreement executed with the investors in the PLAY shall be deemed applicable to this agreement, provided that such definition is no less favorable to DIRECTOR than the definition set forth in the so-called "Approved Form of Theatrical Limited Partnership" (in which event such latter definition shall apply), subject only to the following qualifications:

In computing net profits hereunder, in no event shall there be deducted:

- (1) The _____ % share of net profits to be paid to DIRECTOR hereunder, and
- (11) Any share of net profits payable to any other person, firm or corporation rendering services, granting rights or furnishing materials in connection with the PLAY.

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16. STATEMENTS:

All percentage payments to [] hereunder shall be accompanied by two (2) copies of the weekly box office statement indicating receipts for all performances given during such week. Said box office statements shall be signed by PRODUCER, or his duly authorized representative, and countersigned by the treasurer or assistant treasurer of the theatre at which the PLAY is being presented.

[] Not later than thirty (30) days after the first paid public performance of the PLAY, PRODUCER shall furnish to [] a detailed and accurate statement of production costs computed in accordance with this agreement. [] shall also be furnished with a copy of all operating statements required to be furnished to the investors in the PLAY, at the same time that such statements are required to be so furnished. At such time as recoupment has been reflected in such operating statements, PRODUCER shall no longer be required to furnish such statements.

17. EXAMINATION OF BOOKS AND RECORDS:

[] or [] designee, shall have the right, at reasonable business hours, to examine the books and records of PRODUCER pertaining to the PLAY and the exploitation of any rights therein for the purpose of verifying any statements and/or ascertaining any amounts which may be due [] hereunder. [] shall have the right to make extracts from such books and records, or copies thereof, and/or to cause an audit to be made thereof all at [] sole expense.

*CORPORATION

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18. OWNERSHIP OF DIRECTOR'S CONTRIBUTIONS:

All materials, ideas, suggestions, and stage business contributed or created by DIRECTOR hereunder shall belong to the author of the PLAY or the PRODUCER, as their respective interests may appear.

19. FILM OR TELEVISION USE OF THE PLAY:

PRODUCER shall not film, televise, or otherwise reproduce or transmit complete or partial performances of PRODUCER's stage production of the PLAY, or authorize or permit others to do the same without first negotiating and executing a written agreement with [REDACTED] providing for mutually agreeable additional compensation to [REDACTED] in respect thereto.

CORPORATION

PRODUCER shall have the right for advertising and promotion purposes to have excerpts of up to ten (10)*

20. COLLECTIVE BARGAINING AGREEMENTS:

~~CORPORATION~~ ~~THE DIRECTOR WILL~~

[REDACTED] agrees/DO become a member of any union, guild, or other similar labor organization having jurisdiction of DIRECTOR's employment hereunder, and [REDACTED] agrees/DO remain a member in good standing of such organization during the entire period that he is rendering services to PRODUCER hereunder.

This agreement shall be subject in all respects to the rules and regulations of any union, guild or other similar labor organization having jurisdiction of DIRECTOR's employment hereunder. In the event of any inconsistencies between the rules and regulations of any such organization and the terms and provisions of this agreement, the former shall control and the latter shall be deemed modified or curtailed accordingly.

*minutes in length performed on radio and/or television provided that PRODUCER shall receive no out-of-pocket expenses which may be incurred.

**the DIRECTOR will

INITIAL HERE *J*

21. ARBITRATION:

Any and all disputes, claims or controversies arising out of, under, or in connection with this AGREEMENT or the breach thereof shall be submitted to arbitration to be held in New York City under the rules of the American Arbitration Association pertaining to a single party arbitrator. Judgment upon the award rendered may be entered in the highest court of the forum, state or federal, having jurisdiction.

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22. IMMIGRATION:

PRODUCER agrees, with DIRECTOR's cooperation, to promptly and properly complete and submit such documents and take all steps which may be required by the United States Immigration authorities as a condition precedent to the rendition of DIRECTOR's services hereunder. In the event said Immigration authorities do not provide the necessary consent within a reasonable time after PRODUCER's submission of properly completed documents to the proper authorities, neither DIRECTOR nor PRODUCER shall have any further obligation to one another.

23. ASSIGNMENT:

This agreement may not be assigned without DIRECTOR's prior written consent except to a New York limited partnership organized to produce the PLAY of which

JAY JULIEN

shall be a General Partner; or to a corporation of which

JAY JULIEN

shall be a principal executive officer. In no event shall any permitted assignment of this agreement relieve PRODUCER of any of the obligations of this agreement and PRODUCER shall remain liable for all such obligations.

CORPORATION

its ~~(CORPORATION)~~ shall not have the right to assign any of ~~its~~ obligations hereunder.

24. NO WAIVER:

No waiver by either of the parties hereto of any failure by the other party to keep or perform any covenant or condition of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same, or any other covenant or condition.

INITIAL HERE /

25. NOTICES:

All notices hereunder shall be sent by registered or certified mail or prepaid telegram, addressed as follows:

TO DIRECTOR:

MARTIN FRIED PRODUCTIONS, INC.
c/o Ashley Mamous Agency, Inc.
1301 Avenue of the Americas
New York, New York 10019
Attn: Shirley Bernstein

TO PRODUCER:

JAY JULIEN
331 Madison Avenue
New York, New York

26. This Agreement:

A. Shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators and assigns;

B. Shall be construed and enforced in accordance with the laws of the State of New York, regardless of the actual place of execution and shall be operative throughout the world;

C. Constitutes the entire understanding between the parties and may not be modified or amended except in writing signed by each of the parties hereto.

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22.

IN WITNESS WHEREOF, the parties have hereunto
set their hands and seals the day and year first above written.

DIRECTOR:

MARTIN FRIED PRODUCTIONS, INC.

By: _____

PRODUCER:

By: *J. H. - J. H. - J. H.*

NOTED HERE [9]

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMORANDUM, STEWART, D.J.
Dated October 6, 1975

JAY JULIEN,

Plaintiff,

-against-

SOCIETY OF STAGE DIRECTORS
AND CHOREOGRAPHERS, INC.,

Defendant.

68 Civ. 5120

#43214

FILED
U.S. DISTRICT COURT
OCT 14 10 PM '75
S.D. N.Y.

MEMORANDUM

STEWART, DISTRICT JUDGE:

Plaintiff Julien, a producer of stage plays, has brought this action seeking damages and injunctive relief for alleged violations of Section 1 of the Sherman Act, 15 U.S.C. §1. Defendant, Society of Stage Directors and Choreographers, Inc. ("SSDC"), is an industry-wide organization of directors and choreographers. In 1962 and again in 1972, SSDC entered into a collective bargaining agreement ("Agreement") with the League of New York Theatres, Inc. ("League"), a group which represents the producers of first class theatrical productions. It is this Agreement which plaintiff challenges as violative of the antitrust laws. The Agreement requires that any director engaged by a producer be a member of the SSDC. It further provides for minimum basic wage scales and working conditions, including pension and welfare contributions, a no-strike, no-

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lockout clause, and compulsory arbitration.

While such an industry wide agreement, providing among other things for minimum fees, is in violation of the Sherman Act, as plaintiff argues, see e.g., Goldfarb v. Virginia State Bar, ___ U.S. ___ (June 16, 1975), defendant claims that the agreement comes within the labor exemption provisions of the Clayton and Norris-LaGuardia Acts. (Sections 6 and 20 of the Clayton Act, 15 U.S.C. §17; 29 U.S.C. §52; and Section 1 of the Norris-LaGuardia Act, 29 U.S.C. §101). Plaintiff argues, however, that defendant is not entitled to claim the labor exemption since SSDC members are independent contractors and therefore not in the necessary employer-employee relationship with the producers which is required to claim such an exemption. See e.g., Los Angeles Meat & Provision Drivers Union v. U.S., 371 U.S. 94 (1962); American Medical Ass'n v. U.S., 317 U.S. 519 (1943); Columbia River Packers Ass'n v. Hinton, 315 U.S. 143 (1942); Taylor v. Local No. 7, Int'l Union of Journeyman Horseshoers, 353 F.2d 593 (4th Cir.), cert. denied 384 U.S. 989 (1965).

Plaintiff had moved for summary judgment. That motion was opposed by defendant and denied by the court, since the nature of the relationship between the directors and producers was in dispute and could not be resolved on summary judgment. See U.S. v. Scenic Artists Local 829, 27 F.R.D. 499 (S.D.N.Y.

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1961)). In May and June of 1975, a trial was held to resolve this factual dispute. We now conclude, for the reasons set forth below, that directors are employees of producers and not independent contractors. Defendant therefore comes within the labor exemption and plaintiff's case must fail.

While there are numerous factors which courts and commentators have considered in determining whether an independent contractor or employee status exists,^{1/} the general test is found in an analysis of "the nature and amount of control reserved by the person for whom the work is done." Taylor v. Local No. 7, 353 F.2d at 596. If the employer has no right to control the manner in which the work is performed, then the worker's independent contractor status is clear. See NLRB v. United Insurance Co., 390 U.S. 254 (1968); Bernstein v. Universal Pictures, Inc., slip op. 535 (2d Cir. May 27, 1975); Herald Co. v. NLRB, 444 F.2d 430, 432-3 (2d Cir.), cert. denied, 404 U.S. 990 (1971). Even if an employer exercises complete control over the result contemplated by the parties, however, the worker's independent contractor status may remain. Taylor v. Local No. 7, supra; NLRB v. Steinberg, 182 F.2d 850 (5th Cir. 1950).

Even some reservation of control to supervise the manner in which the work is done, or to inspect the work during its performance does

^{1/} See e.g., 1 Restatement, Agency §220(2) (2d ed. 1958).

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not destroy the independent contractor relationship where the contractor is not deprived of his judgment in the execution of his duties.

Taylor v. Local No. 7, 353 F.2d at 596. Thus the degree of employer control necessary to establish an employer-employee relationship must be determined upon the peculiar facts and circumstances of each case.

In the instant case, the decision is an especially difficult one to make because of the nature of the theatrical production industry. A few courts, however, have been called upon to consider similar problems within the industry. In Ring v. Spina, 148 F.2d 647 (2d Cir. 1945), an antitrust action was brought against the Dramatists' Guild of the Authors' League of America ("Guild"), a nation-wide association of playwrights. Plaintiff alleged violations of the Sherman Act in the Guild's requirement that producers sign an agreement with its members providing for compulsory arbitration, minimum fees, and exclusive dealing with Guild members. As a defense, the Guild asserted the labor exemption contained in 15 U.S.C. §17. The Second Circuit found that the playwright members of the Guild were not "employees" of theatrical producers and were not, therefore, entitled to claim the labor exemption.

An author writing a book or play is usually not then even in any contractual relation with his producer. If and when he does contract, he does not continue in the producer's service to any appreciable or continuous extent thereafter The minimum price and royalty provided by the Basic Agreement, unlike minimum wages in a collective

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bargaining agreement, are not remuneration for continued services, but are the terms at which a finished product or certain rights therein may be sold. And no wages or working conditions of any group of employees are directly dependent on these terms.

148 F.2d at 652.

Recently, a class action suit was brought by members of the Composers and Lyricists Guild of America ("CLGA") charging antitrust violations by 15 motion picture and television producers. Bernstein v. Universal Pictures, 379 F. Supp. 933 (S.D.N.Y. 1974), rev'd slip op. 535 (2d Cir. May 27, 1975). The district court dismissed the action citing exclusive National Labor Relations Board jurisdiction over the dispute which the court perceived to be a refusal to bargain by the producers. National Labor Relations Act §8(a)(3). The Second Circuit reversed, holding that the district court was required to determine whether the composers were independent contractors or employees hired by the producers. "[A]ntitrust jurisdiction cannot be declined simply because independent contractors masquerade as a union." Slip op. at 3710. The Court took notice of "substantial evidence" in the record which indicated that the composers were not employees.

[T]he record suggests that the composers contract for a specific output, work at their own pace at home, and are not subject to day-to-day supervision by the producers. It may be, consequently, that the producer has no right to control the manner in which work is performed,

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so that ... the composers are independent contractors.

Slip op. at 3710-11 (citations omitted).

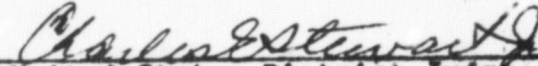
In sharp contrast to the playwrights in the Ring case and the lyricists in the Bernstein case, we think that defendant here demonstrated at trial that directors are employees of producers. It became clear to us during the course of the trial that the producer has the right to and does exercise control over all facets of a production and of the director's work. The testimony revealed that the producer attends auditions and has final authority, with the playwright, in the selection of the cast. (Richards, tr. at 164-67; DaCosta, tr. at 206-10). The producer may add or delete scenes, overruling any objections raised by the director. (DaCosta, tr. at 201-2; Feuer, tr. at 283-8, 258-63; Aaron, tr. at 310-313, 326-28). That authority is just part of the producer's pervasive control over the artistic direction of the play. (See, e.g., Traube, tr. at 228-9; Feuer, tr. at 257-8; 266-8; Wards, tr. at 300-3; Aaron, tr. at 344; Schneider, tr. at 349-50, 361-5). The witnesses cited testified that producers by re-designing sets, choosing costumes, changing the cast and even altering individual cast members' performances are deeply involved in the artistic direction of the production. In addition, by governing the budget, the producer determines the length of rehearsal time, the theatres in which the show will

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be performed, and the locations for out-of-town runs. The producer, therefore, has final control over every aspect of the director's job, unless such control is specifically delegated to the director in his or her contract. To the extent that the testimony of David Merrick, a witness for plaintiff, differed from the findings here and was not discredited upon cross-examination, We do not find that testimony to have been credible.

Since we find the overwhelming credible evidence in the record establishes that directors are employees of producers, we must deny plaintiff's prayer for relief.

SO ORDERED.


United States District Judge

Dated: New York, N. Y.
October 6, 1975.

Amended Memo
Decision

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMORANDUM, STEWART, D.J.
Dated October 10, 1975

JAY JULIEN,

Plaintiff,

-against-

SOCIETY OF STATE DIRECTORS
AND CHOREOGRAPHERS, INC.,

Defendant.

68 Civ. 5120
AMENDMENT TO decision

#43214

OCT 11 9 05 AM '75

FILED
U.S. DISTRICT COURT
S.D.N.Y.

MEMORANDUM

STEWART, DISTRICT JUDGE:

Our memorandum decision, dated October 6, 1975, dismissing the complaint is amended to add the following sentence at the end of the decision:

Costs of this action are to be borne by each party and are not to be taxed to plaintiff.

SO ORDERED.

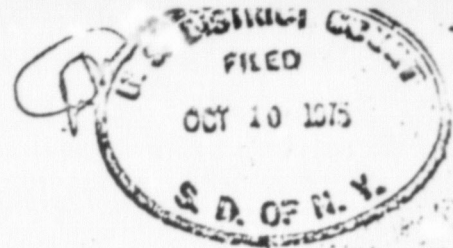
Charles T. Stewart
United States District Judge

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UNIT 425

New York, N. Y.
October 10, 1975.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JAY JULIEN,

Plaintiff,

(C.E.S.)
68 Civ. 5120

-against-

SOCIETY OF STAGE DIRECTORS
AND CHOREOGRAPHERS, INC.,

Defendant.

JUDGMENT

The issues in the above entitled action having been brought on for trial before Honorable Charles E. Stewart, United States District Judge, on May 21, May 22, May 23, May 27 and June 6, 1975, and at the conclusion thereof the Court having reserved decision, and thereafter on October 7, 1975, the Court having rendered its decision in favor of the defendant, it is

ORDERED, ADJUDGED AND DECREED that defendant Society of Stage Directors and Choreographers, Inc. have judgment dismissing the complaint of the plaintiff Jay Julien.

Dated: New York, New York
October 10, 1975

Raymond J. Burch
Clerk

RECEIVED
OCT 10 1975

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOTICE OF APPEAL

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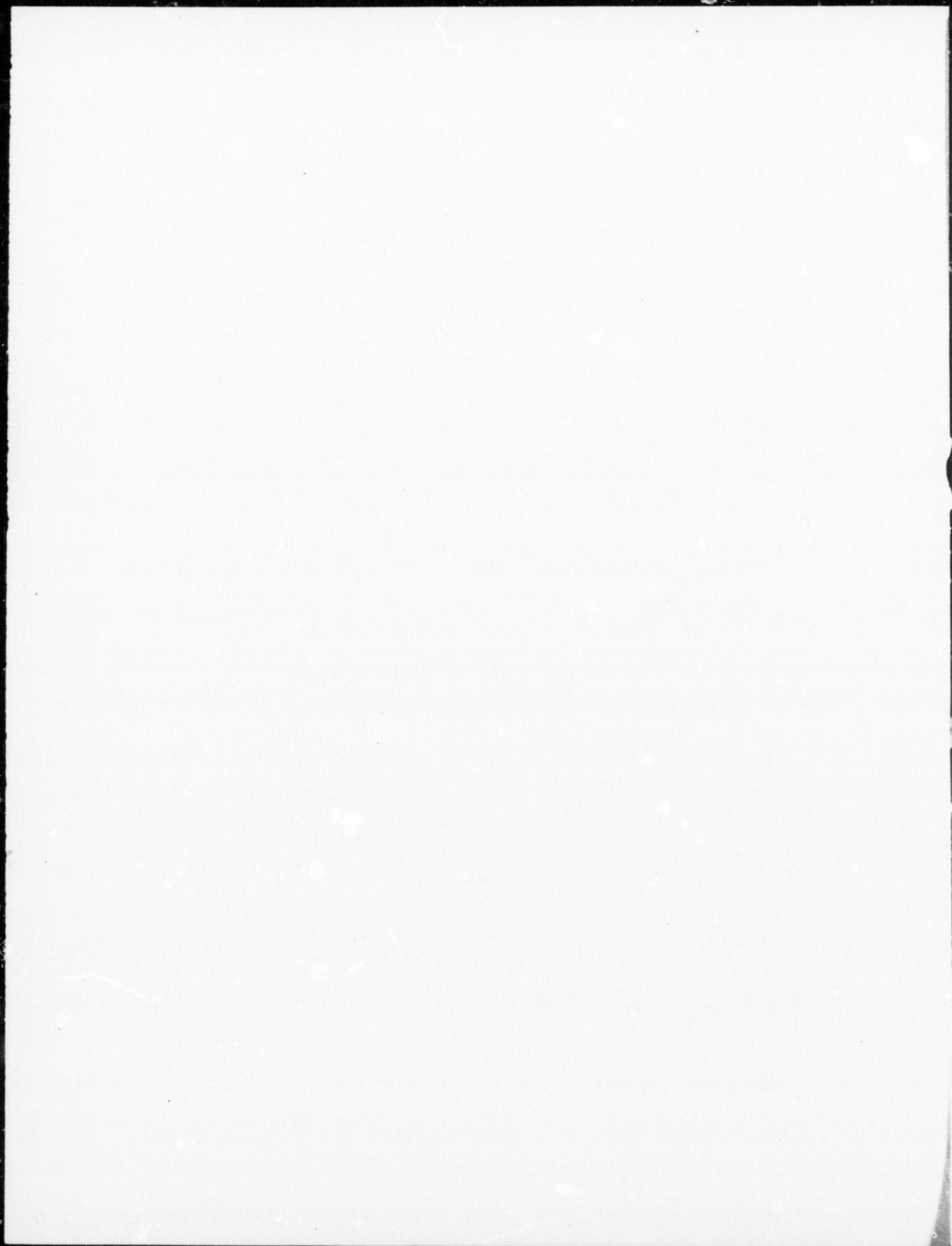
JAY JULIEN,	:	
	:	
Plaintiff,	:	<u>File No. 88 Civ 5120</u>
	:	
-against-	:	(C. F. S.)
	:	
SOCIETY OF STAGE DIRECTORS	:	
AND CHOREOGRAPHERS, INC.,	:	
	:	
Defendant.	:	
	:	
-----	:	X

Notice is hereby given that Jay Julien, above named plaintiff,
hereby appeals to the United States Court of Appeals for the Second Circuit
from the final judgment entered in this action on the 10th day of October,
1975.

Dated: New York, N. Y.
November 5th, 1975

To: Battle, Fowler, Lidstone, Jaffin,
Pierce & Kheel, Esqs.
Attorneys for Defendant,
280 Park Avenue,
New York, New York.

PHILIP J. KASSEL
Attorney for Plaintiff
420 Lexington Avenue
New York, N. Y. 10017
689-5215



SERVICE OF PROCESS ON DEFENDANT

Defendant

19

January 6

Deponent

att

for Pauline L. Linton
John L. Linton

with office